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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF BIG SANDY)
RURAL ELECTRIC, FLEMING-MASON)
ENERGY, GRAYSON RURAL ELECTRIC,) CASE 2010-00089
AND JACKSON ENERGY FOR AN ORDER)
APPROVING AN ON-BILL FINANCING)
PILOT PROGRAM TITLED THE "KY)
ENERGY RETROFIT RIDER")

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

Mr. Derouen:

Please find attached responses to issues raised during the Informal Conference of July 20, 2010 in the above referenced case.

If there are any questions, please feel free to inquire at (606) 474-5136.

Sincerely,




Don M. Combs
Grayson Rural Electric

For:
Big Sandy Rural Electric
Fleming-Mason Energy
Grayson Rural Electric
Jackson Energy

The undersigned, Don M. Combs, as Manager of Finance and Accounting of Grayson Rural Electric, being first duly sworn, states that the responses herein are true to the best of my knowledge and belief formed after reasonable inquiry.

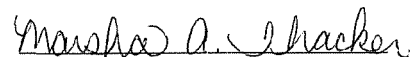
Dated: August 3, 2010

Grayson Rural Electric

By: 

Don M. Combs
Manager of Finance and Accounting

Subscribed, sworn to, and acknowledged before me by Don M. Combs, as Manager of Finance and Accounting for Grayson Rural Electric on behalf of said Corporation this 3rd day of August, 2010.



Notary Public State of Kentucky
Notary Expires: 1-9-2011

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1. Rider – Definitions of Capitalized terms –attached

Please note that one additional change was made to the Rider: a clarification that if the tax credits were not transferrable than the customer would be able to access them.

KY Energy Retrofit RIDER

AVAILABILITY

The KY Energy Retrofit Rider (Rider) is a voluntary tariff available to customers for the purpose of improving resource efficiency and reducing energy consumption and net customer bills. The Rider is only available to qualifying customers taking service under Rate Schedules 1 (residential) and 2 (commercial/small industrial).

Definitions:

Agent – party acting on behalf of the company as defined under Kentucky law.

Company – Utility company implementing the tariff.

Contractor – The individual or company installing a Retrofit.

Customer – The purchaser of utility services at a property that includes a Retrofit or who is applying for a Retrofit. May be an owner or a tenant.

Owner/Landlord – The owner of the property where the retrofit is being installed. May also be the Customer of the utility, or just the landlord.

Retrofit – the energy efficiency improvement being funded as part of utility service, including efficiency improvements to new construction.

Retrofit Project Charge – The monthly payment from the Customer to the Company covering the Retrofit service/amortization.

Terms and Conditions – Any and all regulations, guidelines, and agreements under which the Company provides service to the Customer.

RETROFIT INVESTMENT AND REPAYMENT TERMS

1. No up-front investment is required by Customers. The initial cost of approved efficiency measures will be paid by the Company or its Agent.
2. The Retrofit repayment obligation shall be assigned to the premises and will survive changes in ownership and/or tenancy.
3. Retrofit program costs shall be recovered through a monthly line item Retrofit Project Charge on the utility bill.
4. The Retrofit Project Charge shall be part of the Company's charges for basic utility service. Failure to make payment may result in disconnection in accordance with the Company's approved Terms and Conditions.
5. The Retrofit Project Charge must be less than ninety (90) percent of the estimated average savings associated with the investment.
6. Company or its Agent will be responsible for estimating resource savings and developing a Conservation Plan upon which the Retrofit Project Charge will be based.
7. Although the Company and its Agent(s) expect that all Customers will receive lower monthly utility bills, there is no guarantee of savings.
8. If a Retrofit measure is reported to be faulty, the Company or its Agent will assess (verify the failure), suspend Retrofit Project Charges to the degree that savings are compromised,

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initiate and verify repairs, assign cost to responsible party and reinstitute Retrofit Project Charges.

9. When an account is closed, the outstanding balance of the Retrofit obligation remains with the meter until the account is reopened, combined with another account/service or its meter is transferred to a new Customer, at which time Retrofit repayments will resume as part of service to that meter/facility until paid in full.

CONSERVATION PLAN

The Conservation Plan will be developed by the Company or its Agent and specify measures recommended by the Company to the prospective Retrofit Customer. The Conservation Plan includes:

- Plan Scope – The Conservation Plan will include a detailed description of each retrofit option proposed. The estimated and maximum amounts of financing the Company/its Agent would pay/invest towards each retrofit would be identified. If energy savings are not completely justified on a cost basis, the Conservation Plan will include the amount Customer would pay or invest to ‘buy down’ the remaining project balance to what can be amortized by energy savings/on-bill repayment. There will also be a financial summary of the cumulative projected on-bill repayments including: amount of cumulative program fees repaid; amount of cumulative interest repaid; amount of cumulative principle repaid; and total amount to be repaid over the life of the investment.
- Estimated Resource Savings – The modeled change(s) in cost of resources consumed at the premises attributable to the efficiency measure(s) recommended. The Company or its Agent will be solely responsible for savings estimates and will use generally accepted modeling software and techniques.
- Retrofit Project Charge – The charge to be included on Customer’s utility bill based on the cost of the proposed measure(s) and the resulting savings. The Company will be solely responsible for calculating the Retrofit Project Charge utilizing its standard economic model of discounted cash flows. To the extent available, Company will incorporate grants and low-interest funds into calculation of Retrofit Project Charge for the benefit of Customers who meet qualifying guidelines of such funding sources. In calculating the Project Charge, the Company may add five (5) percent of the capitalized cost of proposed projects as bid by contractors or vendors to offset Retrofit program costs. The annual interest rate used to calculate the Retrofit Project Charge shall be no more than the Company’s current average cost of long-term debt.
- Audit Fee- A Customer or Landlord may be charged a \$200 Audit Fee for complete Conservation Plans. The charge will be waived for program participants or when the Conservation Plan yields less than \$1,000 in improvements that can be paid for by the Company through the program. The charge will be assessed no sooner than (90) days after the Conservation Plan has been provided to the Customer.
- Number of payments- The number of periods for which Retrofit Project Charge will apply at the premises. In no case shall the duration of the Retrofit Project Charge exceed

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seventy-five (75) percent of the estimated life of the measure or fifteen (15) years, whichever is less.

- In the event that multiple measures are being completed as part of a Conservation Plan, the Project Charge will not appear on the Customer's bill until all measures have been completed.

A Customer's and Landlord's signature on the Retrofit Agreement shall indicate acceptance of the Conservation Plan.

"BUY DOWN" ALTERNATIVE

A Customer or Landlord may elect to "buy down" the cost of implementing an efficiency measure so that the Retrofit Project Charge will be less than the average estimated monthly savings. In this way, measures that might not otherwise yield sufficient economic savings to pay for themselves may still be approved. Prior to Company approval of a Conservation Plan that includes one or more uneconomic measures, the Customer or Landlord or a third party must agree to pay the amount required to buy down said measure(s) such that the Retrofit charge is no greater than ninety (90) percent of the estimated savings.

NEW STRUCTURES

A Customer or Owner may utilize this Rider to install high efficiency equipment or measures in new structures. The tariff may cover only the incremental cost between the lowest allowable or "standard" efficiency equipment or measure required in the structure and the higher efficiency equipment or measures chosen by the Contractor, Customer or Owner. Under any circumstances, the Retrofit Project Charge to appear on the participant's bill must be less than the average estimated cost of resources saved by purchase of the higher efficiency equipment or measures.

RESPONSIBILITIES

Responsibilities, understandings and authorizations of the Customer, Company, landlord (if applicable) and Contractor shall be evidenced by this Rider and written agreements, notifications and disclosures/consents, the forms of which are incorporated into this Rider by reference.

The Company/its Agent(s) will

1. market and administer the program,
2. prequalify eligible accounts,
3. perform energy audits to produce Conservation Plans,
4. certify and maintain a list of Contractors, and arrange for a certified Contractor to install retrofit measures
5. act as Customer's representative in verifying suitability of proposed retrofits, estimated savings, satisfactory installation of retrofit measures, and evaluating ongoing performance or need for repair of measures
6. file UCC disclosures with County Clerk for each location

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7. disclose pre-existing retrofit investment benefits and costs to new Customers,

The Company will not be liable for any decisions or actions taken by its Agent, including but not limited to selection of measures, savings estimates, decisions on repairs or extending payment terms to collect missed payments and repair costs, or injury or damage to homes related to installation or use of retrofit measures.

The Company will not be liable for any failure by the previous occupant, building owner or landlord to disclose a Customer's payment obligation.

Company will not be liable for Contractor's work. Any verification by the Company or its Agent and request that the Company initiate Retrofit charges in no way limits the installing Contractor's and product manufacturer's liability as per contractual agreement with the Company/its Agent and under State law.

The written agreements include:

- KY Retrofit Purchase Agreement – Establishes permission and terms for program participation, clarifies charges involved in the program, roles and responsibilities of each party, and notification requirements. Customer responsibilities include signing agreement to participate, providing access to the Company, its Agent and retrofit Contractor(s) for audit, retrofit, inspection and repairs, payment of retrofit charges included in utility bills, becoming informed about routine operation of retrofits, informing the Company if an installed retrofit measure fails or malfunctions, being responsible for all costs associated with Customer damage or neglect and accepting cost for out-of-warranty repairs. Owner responsibilities include agreeing to have retrofit installed, maintaining retrofits, written notification to prospective tenants or purchasers of the property so new occupants sign that they are informed of the energy investment burden on the meter, and fulfillment of Customer responsibilities any time metered account is in the Owner's name. Residential accounts will have repayment terms of up to 15 years, while commercial property accounts will have a maximum repayment term of 10 years and require loan security on investments greater than \$20,000.
- Master Contractor Agreement – Establishes that the contractor agrees to do the work as specified in the Conservation Plan. If the contractor needs to deviate from the Conservation Plan, the contractor will secure written authorization from the Company in advance. The Contractor is responsible for all aspects of his/her work, energy savings if provided, and all permits, insurance coverage, warranties, bonding and representation. The contractor will not charge more than the final approved estimate for the work performed. The Agreement states that the Company is not responsible for the contractor's work, but the Company does act as an intermediary in attempting to resolve any disputes.

TRANSITION IN ROLES

Unless otherwise specifically set forth in a standard Retrofit purchase agreement made part of this Rider, responsibility for outstanding Retrofit obligations falls on the successor party when the roles of the Customer, Owner or tenant change, provided the required disclosure is made and

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consent to assume the obligation is obtained. For example: If a tenant purchases an apartment complex, that individual assumes the obligations of Owner if disclosure is made and consent is obtained.

FAILURE TO MAKE REPAYMENT

The Customer or Landlord is obligated to pay for overall utility service which includes both the electric service provided and the repayment of the energy efficient investment as presented on the monthly bill. In the event no payment is made and the total monthly bill become past due, then delinquency will be handled in accordance with the Company's approved Terms and Conditions.

OTHER

1. This Rider applies to Retrofit measures permanently installed as fixtures at the premises. Portable efficiency products such as commercial lighting may be included where preapproved and documented by the Company/its Agent. The Company will solely determine which measures or products may be included in the Retrofit Program. Premises in which Retrofit measures will be installed must be permanently anchored to a foundation.
2. Measures will be owned by the capital provider for tax or carbon credit purposes until Retrofits have been fully paid off, however if tax credits can only be applied for by Customer, than Customer shall retain eligibility.
3. The Company or its Agent will determine the eligibility of a Customer based upon the Customer's bill payment history with the Company, projected energy savings and program capacity. At its sole discretion, the Company may determine a property is not eligible for the program and does not qualifies for this Rider if:
 - a. The structure has an expected life shorter than the payback period, or
 - b. The structure does not meet applicable public safety or health codes.
4. At its sole discretion, the Company will determine the maximum Retrofit program investment in any year.
5. The initial term of the Retrofit Purchase Agreement may be extended by the Company or its Agent to recover its costs for out-of-warranty repairs or missed payments.
6. If an account is dormant for more than one year, or the underlying facility has been destroyed, any outstanding retrofit balance net of insurance reimbursement may be charged as loss in accordance with the Company's approved Terms and Conditions.

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2. Legal status

a. UCC1 Purpose – Notice or lien

The UCC1's purpose is purely for notification purposes. If the value that is secured is a concern, then the amount of the security could be much lower than the actual balance of the loan, and simply declare that there was a utility agreement on the property that required payment of a monthly charge. In the case of a new owner, or new occupant, they will receive notification from the utility when they sign up for utility service, but in the case of a sale, or even for a lease signing, the utility sign up occurs after the purchase or lease was finalized. In order to notify potential purchasers of the agreement before they make the final purchase decision, some connection to the deed is preferable. UCC1's are short, simple, and although they expire in five years and would have to be refiled, would show up in any adequate title search.

b. Any Alternatives that offer notice to prospective buyers

Other legal forms that run with the land could be used, but may have other difficulties. A covenant or an easement of limited duration could be filed, requiring the homeowner to maintain the equipment and allow utility access to metered data and the property for inspection, and could also identify the agreement and would probably show up in a title search. The length of these could be specified in the document, and would not need to be refiled except for when an agreement was renegotiated. However, this would be a non-traditional use of these tools, and might not be looked at favorably by a court. Further, they may require more input from the customers to properly identify the property they are attached to, although the utility industry typically has more leeway than your average creditor.

Another option would simply be to file a mortgage for the amount of the retrofit charge. Although this would trigger all of the fair credit requirements, it would definitely show up in a title search, and would guarantee payment in most cases. This option would require more legal work, and thus expense, and would reduce the number of customers who would be willing or able to participate in the program.

It may be possible to file a notice of interest relating to the property with each clerk's office, specifically related to each property, that simply forms a notice and could be set to expire at the end of the term unless modified. More clarification needs to be done to guarantee that each clerk's office would be comfortable with that procedure, and that the notice would show up in a title search of the property. However, if the notice shows up in the title search, the cost is relatively low or similar, then the notice might serve the interests of the program without resorting to a lien. The Joint Applicants will explore the possibility of filing a notice of interest rather than a UCC1.

c. Bankruptcy –secured vs. non-secured debt

The retrofit investment is not a debt. Therefore it is neither secured nor unsecured. It is an investment in utility service that will be paid back on the customer's utility bill, or the next customer's utility bill. In

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Kansas, if the purchaser of the property has proper notice of the existence of the On-Bill charge, then the purchaser is required to pick up the payments in order to receive utility service. If the transfer

occurs at a private sale, and the purchaser were not notified, they could require the seller to pay off the balance from the proceeds of the sale, as the purchaser believed they were receiving the property with no encumbrances. A security filing, such as a UCC 1, would help to clarify that the purchaser did indeed receive constructive notice.

d. Subordination issues

Our contacts in Kansas and at DOE believe that the PACE concerns have no relevance to tariffed On-Bill. Because the program is not a loan, but is a part of utility service, and would require the next purchaser to pay the charges – provided they received proper notification – then the mortgage balance would be unaffected. If necessary, the UCC 1 could clarify that it was a subordinate interest, but its relatively low value should make that unnecessary in most cases.

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3. Arbitration –

In the case that arbitration is required, the Joint Applicants will select an arbitrator from either the National Academy of Arbitrators or the Better Business Bureau list of arbitrators in Kentucky. With the approval of both parties, an arbitrator not on either list may be selected.

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4. Contractors -- List

The cooperative will maintain a list of vendors that have participated in program training and have signed the Participating Contractor Master Agreement. The cooperative member may also request a contractor of their choosing, however that said contractor must agree to participate in program training and sign the Master Agreement. If a contractor repeatedly fails to satisfactorily complete jobs, they may be removed from the list at the sole discretion of the cooperative.

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5. Ford Foundation and other funding updates

MACED has received word that it will receive the Ford PRI funding, of which MACED requested \$1M for On-Bill. The Ford award has been provided for On-Bill conditionally, based on PSC approval of the tariffed model. The conditional approval does not require the PSC to approve the original rider as submitted, but would require the principal aspects of the pilot design to remain in place. For the other grants, MACED was not selected to submit a proposal to the Doris Duke foundation, but has signed a contract with Kentucky Housing Corporation for \$300,000 in operating funds. Still outstanding are the CDFI request and the DOE grant filed through the State Energy Program office (in Kentucky DED1.)

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6. Payback period during the pilot

In order to pay for whole house retrofits, including HVAC replacement, a payback period of fifteen years will likely be necessary. In cases where customer's homes require less work, where rebates are available, or where the customer can provide a significant buy-down, then less time may be required if more of the savings are used immediately to pay for retrofits. However, to obtain a true test of the model for whole house, deep retrofits, the 15 year payback period is essential. In situations where at maximum savings capture, less than 15 years would be needed, customers can be offered the choice of whether they would prefer higher payments for a shorter period, or lower payments for a longer period, up to 15 years.

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7. Deviation to the disconnect regulation

807 KAR 5:006, Section 27 provides that in special cases, for good cause shown, the Commission may permit deviations from this administrative regulation. If the commission does not believe that the retrofit services satisfy the service provided at the point of disconnection test, the Join Applicants request a deviation based on the unique characteristics of the on-bill financing program, noting that under the program the on-bill financing is considered part of utility service. In requesting a deviation, the Applicants stress that it would only be applicable to those customers participating in this voluntary program. Thus the scope of the waiver would be limited to the scope of the pilot program.

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8. Write – offs

For purposes of the pilot, the applicants will agree to cover any expenses related to write-offs from funds outside of the rate base, and that all write-off expenses will not be charged to the rate payors. The write offs will be covered from funds for other non-regulated activities along with other expenses excluded by statute. Because the tariff is provided as part of utility service, if the pilot is extended the joint applicants reserve the right to reassess the inclusion of write-offs given the experience gained during the pilot at the time the pilot is extended.