

February 16, 2024

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PUBLIC SERVICE
COMMISSION

Via Electronic Filing

Linda C. Bridwell, P.E., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602

RE: KY PSC Case No. 2023-00421
Roger D. Shocklee, Complainant, versus Kenergy Corp, Defendant

Dear Ms. Bridwell:

Please accept the attached electronic version of Complainant's Motion for Summary Disposition with Memorandum. The documents in electronic format are submitted with the request that they be filed into the record for KY PSC Case No. 2023-00421. Pertinent information has been redacted from the public version in accordance with 807 KAR 5:001, Section 4(10).

Counsel certifies that all material filed with the Commission in this electronic submission is a true representation of the materials prepared for the filing.

Please contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/ David E. Spenard
Randal A. Strobo
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Counsel for Roger D. Shocklee

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------|---|------------|
| ROGER D. SHOCKLEE |) | |
| |) | |
| COMPLAINANT |) | CASE NO. |
| |) | 2023-00421 |
| V. |) | |
| |) | |
| KENERGY CORP. |) | |
| |) | |
| DEFENDANT |) | |

**MOTION FOR SUMMARY DISPOSITION
IN FAVOR OF THE COMPLAINANT
BASED UPON THE EXISTING RECORD**

WITH

MEMORANDUM IN SUPPORT OF MOTION

Comes now Roger D. Shocklee, Complainant, by and through counsel, and moves the Kentucky Public Service Commission (“PSC” or “Commission”) for a summary disposition of the Complaint in the instant case in favor of Complainant and based upon the existing record pursuant to 807 KAR 5:001, Section 5(1). Complainant tendered applications containing the information required by Kenergy Corp.’s (“Kenergy”) Commission-approved tariff form, and Kenergy improperly rejected them. In support of his motion, Complainant states the following.

I. FACTUAL BACKGROUND

Complainant is (since 1993) a member of Kenergy, and he has multiple service accounts with Kenergy.¹ Through form applications for interconnection (forms provided by Kenergy) which are consistent with Kenergy's Commission-approved form, Complainant tendered two (2) complete applications for interconnection.² The applications were rejected. Through a November 30, 2023 letter from Rob Stumph, P.E., Vice President, Eng./Ops., Kenergy documented and admitted the sole reason for the rejection.³ Per Mr. Stumph, at pertinent part:

Mr. Shocklee's application was rejected because he is not the owner of the property where the proposed solar facility was to be installed. KRS 278.465 defines an "eligible customer-generator" as one who owns and operates an electric generating facility ... located on the customer's premises.⁴

Mr. Stumph's November 30, 2023 letter, which speaks for itself, does not state that either application was deficient, that Complainant had any further recourse with Kenergy, or that Kenergy's position was anything other than fixed. Having had his applications

¹ See Kenergy Corp.'s Answer (filed Jan. 12, 2024), Numbered Paragraph 1 (Hereinafter "Answer, Paragraph ____.")

² Complaint (filed Dec. 18, 2023), Numbered Paragraph 8, parts c through i (hereinafter "Complaint, Paragraph ____."); see also Answer, Paragraph 13 ("Kenergy admits that two applications were made on behalf of Roger D. Shocklee by Solar Energy Solutions, LLC ... on November 9, 2023."). See <https://www.kenergycorp.com/wp-content/uploads/APPLICATION-AND-APPROVAL-PROCESS-11-20-2023.pdf> (viewed Feb. 1, 2024) for Kenergy's website link to its form for Application and Approval Process for net metering interconnection.

³ Complaint, Paragraph 8, j and Exhibit D; see also Answer, Paragraph 20 ("Kenergy admits that Rob Stumph, PE, Vice-President, Eng./Ops. For Kenergy documented the rejection of the applications at issue in the letter attached to Mr. Shocklee's Complaint as Exhibit D.").

⁴ Complaint, Exhibit D.

definitively rejected by Kenergy, Complainant filed the formal complaint in the instant proceeding.

II. PROCEDURAL BACKGROUND

On December 18, 2023, a formal complaint (through 807 KAR 5:001, Section 20, Section 278.260(1), and KRS 278.467) was tendered to the Commission by counsel for Complainant. By an Order entered January 3, 2024, the Defendant, Kenergy Corp. (“Kenergy”), was ordered to satisfy the matters complained of or file a written response.⁵ Kenergy filed its Answer to the Complaint on January 12, 2024. On February 2, 2024 Commission Staff directed that Mr. Shocklee respond to its request for information. On February 15, 2024, Mr. Shocklee filed his response.

III. REQUESTS FOR SUMMARY DISPOSITION ARE PERMISSIBLE

Complainant is authorized to file a motion pursuant to 807 KAR 5:001, Section 5(1). While the Commission has not adopted the Kentucky Rules of Civil Procedure, the Commission has observed: “[T]he principles established by the courts in ruling on motions for summary judgment provide persuasive guidance in our consideration of whether to rule on a complaint case without conducting an evidentiary hearing.”⁶

Civil Rule (“CR”) 56.01 states, for a claimant:

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any

⁵ Order (Ky. P.S.C. Jan. 1, 2024), page 1.

⁶ Case No. 2015-00260, *Johnny D. Pennington, Complainant, v. Kentucky Power Company, Defendant*, Order (Ky. P.S.C. Feb. 8, 2016), page 9; also see Case No. 2004-00036, *Ballard Rural Telephone Cooperative Corporation, Inc., Complainant, v. Jackson Purchase Energy Corporation, Defendant*, Order (Mar. 23 2005), pages 7 and 8 (“[I]n determining whether to summarily dispose of this proceeding, we are guided by Civil Rule 56 and the principles established by the courts resolving motions for summary judgment.”).

time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

In the instant case, Defendant has filed its Answer, and there are no other motions nor any data requests pending.

CR 56.03 (Motion and proceedings thereon) states:

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if **the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.** A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. (Emphasis added).⁷

The principles of CR 56.03 are well-suited for the instant case because the Complaint concerns questions of law, namely whether there is a statutory requirement for a member of Kenergy to own property in fee simple as a condition precedent for having an application for net metering accepted for review and a decision by Kenergy. Secondly; whether Kenergy can require additional information separate from the information required on its Commission-approved tariff as a condition for processing an application.

⁷ *Id.*, *Ballard Rural Telephone Cooperative Corporation, Inc.*, at page 8 (quoting CR 56 at pertinent part in bold).

ARGUMENT

A. KRS 278.465 Does Not Require Property Ownership as a Condition Precedent for Applying for Interconnection for Net Metering Service.

Through Mr. Strump's November 30, 2023 letter, Kenergy documents one (1) reason for rejecting Complainant's applications for interconnection.

Mr. Shocklee's application was rejected because he is not the owner of the property where the proposed solar facility was to be installed. KRS 278.465 defines an "eligible customer-generator" as one who owns and operates an electric generating facility ... located on the customer's premises."⁸

KRS 278.465 to KRS 278.468 (Kentucky's "Net Metering Law") sets forth the definitions for the Net Metering Law through KRS 278.465(1) which states:

"Eligible customer-generator" means a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements;

The statutory requirements for determining eligibility net metering service (which necessarily includes interconnection) include (1) being a customer of a retail electric supplier, (2) owning and operating an electric generation facility that is (3) on the customer's premises for (4) the primary purpose of supplying all or part of the customer's own electricity requirements. There is no requirement in the Net Metering Law for an applicant for interconnection be the fee simple owner of the property upon which the eligible customer-generator will be located. In fact, fee simple property ownership is not identified or discussed in Kentucky's Net Metering Law.

Pursuant to KRS 446.015, Kentucky statutes are written in nontechnical language:

⁸ Complaint, Exhibit D.

All bills introduced in the General Assembly after June 17, 1978, shall be written in nontechnical language and in a clear and coherent manner using words with common and everyday meanings. Enactment of a bill by the General Assembly shall be a conclusive presumption that such bill conforms to this section.

Kentucky's Net Metering Law was enacted after June 17, 1978; therefore, it is subject to the plain language rule of common and everyday meanings.

Thus, we first look at the language employed by the legislature itself, relying generally on the common meaning of the particular words chosen, which meaning is often determined by reference to dictionary definitions.⁹

Through the plain language rule: "Premises" is properly defined as "a house or building, together with its land and outbuildings, occupied by a business or considered in an official context."¹⁰

The General Assembly's choice of "customer's premises" in KRS 278.465(1) demonstrates an intent to use a phrase quite different from "fee simple property ownership" for determining eligibility for a net metering interconnection. Fee simple property ownership and occupancy of premises are not synonymous or otherwise interchangeable because they do not mean the same thing. While a fee simple owner can certainly occupy the property; it does not follow that all occupiers of property are fee simple owners. Occupiers of a premises can range (for limited examples) from trespassers, to licensees, to lessees. If the intent of the General Assembly had been to limit net metering service to fee simple property owners, it would have chosen those words. Instead, it chose "customer premises."

⁹ *Jefferson Co. Bd. of Education v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012).

¹⁰ *The New Oxford American Dictionary* 1338 (Second Edition 2005).

In the instant case, Complainant is, pursuant to a lease agreement, the lawful occupant of the premises at issue. Complainant is a customer of Kenergy, and he is receiving service from Kenergy at these premises. Complainant is well-within the scope of KRS 278.465(1) in terms of prospective ownership and operation of an electric generating facility "located on the customer's premises." The plain language of KRS 278.465(1) is unambiguous and clearly does not require fee simple ownership by the applicant of the property serving as the applicable customer's premises.

KRS 446.080(4) states:

All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning.

The Commission's administrative regulations confirm that even if "customer premises" is viewed as having a technical meaning, "customer premises" still does not correspond to property held under fee simple ownership. 807 KAR 5:006 Section 1(4) states: "'Customer' means a person, firm, corporation, or body politic applying for or receiving service from a utility." Complainant is a member and customer of Kenergy. Complainant's objective is to own and operate an electric generating facility for the primary purpose of all or part of the customer's own electricity requirements. Complainant has applied for interconnection for service to his premises.

807 KAR 5:041 (Electric) is the Commission's administrative regulation governing electric service. Per the definitions in 807 KAR 5:041 Section 1 (4) "'Customer premises'"

means the building for which service is intended or in use.”¹¹ There is no requirement in Kentucky’s Net Metering Law for Complainant to be the fee simple owner of the property as a condition precedent to applying for service. The Commission’s administrative regulations demonstrate that even through a reading of the phrase “customer premises” as applied specifically to an electric utility, “customer premises” does not mean or require fee simple ownership of property.

Whether by reference to the plain language meaning of “customer premises” required through KRS 446.015 or by reference to the technical definition of “customer premises” contained in the Commission’s administrative regulations (considered through KRS 466.080), Complainant is seeking interconnection for an electric generating facility “located on the customer’s [Complainant’s] premises.” If the logic of Kenergy is followed, then KRS 278.466(8) among other statutory provisions in the Net Metering Law, is nullified.

KRS 278.466(8):

An eligible customer-generator installation **is transferable to other persons at the same premises** upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in KRS 278.467 and in subsection (7) of this section. (Emphasis in bold.)

There is no requirement through KRS 278.466(8) that the “other persons at the same premises” demonstrate that they are fee simple owners of the property (or even

¹¹ 807 KAR 5:041 Section 1 does not define “property owner.” Although 807 KAR 5:041 Section 21 discusses property owners, the definitions of “applicant” and “customer” in this context is **expressly** confined to the purposes of “Underground Electric Distribution Systems for New Residential Customers.” See 807 KAR 5:041 Section 1(1) and (3). Section 21 is, therefore, inapplicable to the instant Complaint.

lessees, for that matter). Kenergy's reading of KRS 278.465(1) that property ownership is, aside from being contrary to the mandated rules of statutory construction and the Commission's administrative regulations, renders KRS 278.466(8) a nullity, and the presumption is against any reading of a statute that renders another section of the same legislation without meaning or effect.¹²

There is no requirement that Complainant be the owner of the property where the electric generating facility will be located in order to have his applications for interconnection accepted for review. Complainant's lawful occupancy through a lease of the property in questions (where he is presently receiving service from Kenergy) meets the requirement of "customer premises" for purposes of KRS 278.465(1), and Kenergy wrongfully rejected Complainant's applications for interconnection. Complainant demonstrates his entitlement to relief and that there is no genuine issue as to any material fact. Complainant demonstrates his entitlement to relief through a summary disposition.

B. Kenergy's Rejection Violates KRS 278.160 – The Filed Rate Doctrine

Kenergy's Commission-approved tariff provisions for net metering¹³ expressly sets forth the form for a Level 1 Application for Interconnection and Net Metering.¹⁴ Each of Mr. Shocklee's Applications for Interconnection were filed with Kenergy on application

¹² See *Jefferson Co. Bd. of Education v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012).

¹³ *Kenergy Corp. of Henderson, Kentucky, Classification of Service and Rules and Regulations for Furnishing Electric Service to All or Portions of Breckenridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Ohio, Muhlenberg, Union, and Webster Counties in Kentucky*, Schedule 46 – Net Metering ("Schedule 46").

¹⁴ Schedule 46, P.S.C. Ky. No. 2, Original Sheet No. 46K, effective Jan. 8, 2009 (attached to this Memorandum as Memorandum Exhibit 1).

forms supplied by Kenergy.¹⁵ The application forms provided by Kenergy and filed by Mr. Shocklee comply with the Commission-approved form of the Level 1 Application for Interconnection and Net Metering required by Schedule 46, Sheet 46K.

Neither Kenergy's Commission-approved Level 1 Application or Kenergy's application forms provided to Mr. Shocklee contain any requirement that Mr. Shocklee demonstrate proof of fee simple property ownership as a condition for acceptance of an application for review. The information that Kenergy requires from an applicant for acceptance of a Level 1 application is established by reference to its tariff, and its tariff does not contain a requirement of fee simple property ownership. The imposition of the additional (unapproved) requirement that does not appear in the application form approved by the Commission violates KRS 278.160.

Subsequent to Mr. Shocklee's applications for interconnection, Kenergy revised its application form on November 20, 2023.¹⁶ Kenergy now expressly requires (in violation of Schedule 46, Sheet 46K), among other things: "Proof of property ownership (copy of tax bill will suffice)." Kenergy did not seek Commission approval for this revision to the Level 1 Application for Interconnection and Net Metering form required by Schedule 46, Sheet 46K through a tariff revision (807 KAR 5:001); further, Kenergy's subsequent revision of its application form was not consequent to a Commission Order.

¹⁵ Complaint, Exhibits B and C (pertinent application submission pages attached to this Memorandum as Memorandum Exhibits 2 and 3).

¹⁶ Kenergy's current application for interconnection available through its website is attached as Memorandum Exhibit 4, and the pertinent "revised" application page is attached as Memorandum Exhibit 5.

Kenergy's revision of its application form to include a new requirement of property ownership for applying for interconnection under Schedule 46 adds an additional requirement that is not contained in Kenergy's Commission-approved application or tariff provisions for net metering. KRS 278.160 and the Commission's administrative regulations prohibit Kenergy from unilaterally adding to or subtracting from its Commission-approved tariffs.

Kenergy improperly and unlawfully changed the text of its application form and improperly added a new substantive requirement to the same application form. Kenergy's policy concerning fee simple property ownership as a requirement for applying for net metering service violates KRS 278.160.

In passing, Kenergy now uses a form that also requires proof of liability insurance for the generating facility. While, on this point, that revision causes a material difference between Kenergy's Commission-approved form and the form in use. At least with that change, the insurance requirement has a textual basis in Kenergy's net metering tariff. Specifically, Schedule 46, Sheet 46O at numbered paragraph 12 contains the liability insurance requirement as a condition of net metering. Setting aside the requirements of KRS 278.160 and 807 KAR 5:011 for the insurance requirement revision, Kenergy's revision of the form to include a fee simple ownership requirement does not have a textual basis in Kenergy's net metering tariff. The revision to include a fee simple ownership requirement is a qualitatively and legally distinct violation of the Filed Rate Doctrine.

C. Kenergy Improperly Seeks to Recharacterize Its Rejection.

Kenergy, in its Answer, frequently identifies its Commission-approved tariffs in justifying its rejection of Complainant's applications. Nonetheless, Mr. Stumph's

November 30, 2023 letter relies solely upon KRS 278.465 and does not identify any Kenergy tariff provision or advance any position based upon a Kenergy tariff provision.

Mr. Stumph states:

Mr. Shocklee's application was rejected because he is not the owner of the property where the proposed solar facility was to be installed. KRS 278.465 defines an "eligible customer-generator" as one who owns and operates an electric generating facility ... located on the customer's premises."¹⁷

Kenergy, through its Answer, rewrites Mr. Stumph's November 30, 2023 letter to add a rationale that Kenergy did not rely upon while documenting its decision to reject the applications. Specifically, through its Answer, Kenergy states that the "contents of the letter documenting Kenergy's rejection of the applications at issue in compliance with Kenergy's Commission-approved tariffs and KRS 278.465."

Kenergy rewrites Mr. Stumph's letter by adding a rationale that Mr. Stumph did not include. Kenergy's rejection, as documented by Mr. Stumph, was premised solely and squarely upon an alleged statutory mandate, and it does not identify any lack of compliance with Kenergy's Commission-approved Level 1 Application for Interconnection and Net Metering established through Schedule 46, Sheet 46K. In fact, Mr. Stumph does not identify any item of information required by Schedule 46, Sheet 46K that Mr. Shocklee fails to provide. Mr. Shocklee's applications are fully compliant with the requirements of Schedule 46, Sheet 46K. As demonstrated in Argument B above, Kenergy did not follow its Commission-approved tariffs.

Complainant has a right to contest the decision that Kenergy made regarding his applications. As the November 30, 2023 letter conveys, Mr. Stumph's documentation is

¹⁷ Complaint, Exhibit D.

in direct response to a request for Kenergy to state what took place. Mr. Stumph is an agent of Kenergy with knowledge of and responsibility for the rejections. The Complaint does not present Mr. Stumph's documentation out-of-context. Complainant is not required to anticipate or address unidentified tariff provisions that Kenergy did not document as the basis for its rejections until after the Complaint was filed.

Complainant is not required to use a form that requires information other than the information required through the Commission-approved form in Kenergy's net metering tariff. Mr. Shockless satisfied his requirements for submitting a Level 1 Application for Interconnection and Net Metering through providing the information required by Schedule 46, Sheet 46K. Clearly, Mr. Stumph did not document reliance upon any tariff provision as the basis for the rejections, and it is improper for Kenergy to rewrite the November 30, 2023 letter through its Answer in order to offer a rationale, *post hoc*, that Kenergy did not document as having been relied upon.

D. Kenergy's Property Ownership Argument is Without Merit.

Kenergy acknowledges that it is presently providing electric service to the premises in question, and Complainant is the customer/member who is responsible for the two (2) service meters which are the subjects of the applications. Kenergy has not and does not contest Complainant's present right to receive electric service from Kenergy through these two (2) meters upon these premises.

Kenergy, well-after authorizing service to Complainant for these premises, now states that it must "exercise a basic level of due diligence to determine whether a customer has the ownership rights of a property owner to cause improvements to be

made upon real property.”¹⁸ The argument is without substance. First, Kenergy is already serving this member at these premises. Second, Mr. Stump’s letter does not document any Kenergy improvements that are necessary to render interconnection.¹⁹ Further, even under the assumption that any Kenergy improvements are necessary, no (otherwise undocumented) improvements have been identified and demonstrated as outside of Kenergy’s existing rights for serving the customer’s premises. As importantly, even under the assumption that any Kenergy improvements are necessary, that matter bears upon the approval or denial of the applications rather than the acceptance or rejection of the applications.

Kenergy’s position, through the plain language of Mr. Stumph’s letter, is that the lack of Complainant’s fee simple ownership of the property prevents service to these premises in all circumstances.²⁰ Kenergy, thus, takes the position that fee simple ownership is necessary for net metering service such that a lessor could never agree to grant Kenergy additional property rights to enable net metering service to a lessee at leased premises.²¹ The position is clearly in error and contrary to the Net Metering Law.

¹⁸ Answer, Paragraph 8.

¹⁹ Compare Mr. Stumph’s attitude toward Complainant with Kenergy’s Tariff Schedule 46, Sheet Number 46B (Upon rejection of an application, “Kenergy will work with the customer to resolve issues to the extent practicable.”).

²⁰ *Id.* Mr. Stumph does not suggest that there is any way for Complainant to resolve the issue other than through fee simple ownership.

²¹ Complaint does not suggest that Kenergy’s existing rights for serving these premises are insufficient.

Moreover, Complainant, rather than Kenergy, is the owner of the electric-generating facilities that will be behind-the-meter.²² Complainant's capacity to use the leased premises for his commercial operation is a property rights matter between Complainant and his lessor, and Kenergy fails to identify any aspect of KRS Chapter 278, the Commission's administrative regulations, or its own tariffs granting Kenergy a general right of supervision over lessor's property rights and the lease arrangement.²³

E. Kenergy's Affirmative Defense that It Would Have Denied the Applications is Based in Tariff Nullification, and It is Also Either Estopped or Defaulted and Cannot Be Used to Expand the Scope of Considerations for this Complaint and Request for Relief.²⁴

Kenergy, having documented its rejection of the applications for interconnection based solely upon its allegation that its net metering service to a premises requires fee simple ownership, now states that even if it had accepted the applications, they both would have been denied. Kenergy's logical position, therefore, is that it can accept applications that fail to meet the requirements of its Commission-approved tariff form when it thinks that it will approve the project and reject applications that meet the requirements of its Commission-approved tariff form when it thinks it will deny the project. Tariff nullification is not a valid affirmative defense.

²² KRS 278.465(1).

²³ If the lessor believes that Complainant is or will be in violation of a provision the lease, that is matter for the **lessor** to vindicate. Kenergy fails to demonstrate how it has any more interest in monitoring Complainant's relationship with his lessor and his use of this property, including his behind-the-meter facilities, for his commercial operations, than Kenergy has in monitoring any other tenant's or lessee's (member/customer's) relationship with any other landlord or lessor.

²⁴ Complainant has set forward sufficient facts for relief which sustain his burden of proof. Complainant addresses these two (2) points separately.

This affirmative defense is not available for two other (2) separate reasons. In documenting the rejections, Mr. Stumph did not document any decision by Kenergy concerning the fifteen (15) percent metric referenced in Kenergy's Answer.²⁵ Kenergy may not assert, as a defense of its rejection of the applications, a matter that it did not document as a basis for its rejection of the applications. There is no genuine issue of material fact because Mr. Stumph's only documented reason for rejection concerns property ownership and not any deliberative process concerning the proposals.

Kenergy, having chosen to **reject** the applications based solely upon the position that KRS 278.465 **prevents** their acceptance, cannot simultaneously assert the antagonistic position that it could still vest itself with authority to act under Schedule 46 to support binding findings and determinations on the applications. More importantly, it did not document any such findings or determinations in communicating its final action on the applications. Kenergy rejected the applications; it did not deny them. Complainant's rights regarding a denial differ from his rights consequent to a rejection. Specifically, Kenergy now seeks to assert as a defense a decision that it claims it could not vest itself to make because of KRS 278.465.

Whether through the principles of estoppel or default based upon actions prior to the Complaint and/or through the adoption of an antagonist position in its Answer through unsworn testimony, Kenergy cannot assert that it would have denied the applications even if they have been accepted. Additionally, such an allegation has not been proven. Even if the allegation is considered in a light most favorable to Kenergy, it does not create a genuine issue of material fact because it is unnecessary for the Commission to reach a

²⁵ Answer, Paragraphs 45 and 46.

decision upon the sole legal issues presented through this Complaint, namely whether fee simple ownership is a condition precedent for applying for an interconnection to obtain net metering service and whether Kenergy can, as a requirement to accept an application, demand information not required on its Commission-approved form. Kenergy may not now expand the issue of the Complaint beyond the issue created by its sole documented position concerning the rejection of Complainant's applications for interconnection.

WHEREFORE, Complainant respectfully moves this Commission to enter an Order granting summary disposition of this Complaint and requiring Kenergy to accept the two (2) applications for interconnection that were unlawfully rejected, and provide all other relief the Commission deems appropriate.

Respectfully submitted,

/s/ David E. Spenard

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Counsel for Roger D. Shocklee

**Notice And Certification For Filing
And
Regarding Privacy Protection for Filing**

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by electronic mail message to the Commission's Executive Director, February 16, 2024, in conformity with the instructions in the request for information in the instant case. Pursuant to the Commission's Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to Novel Coronavirus Covid-19*, the paper, in paper medium, is not required to be filed.

Pursuant to 807 KAR 5:001, Section 4(10), pertinent items have been redacted in five (5) attachments.

/s/ David E. Spenard

Notice And Certification Concerning Service

No party has been excused from the electronic filing procedures in the instant proceeding.

/s/ David E. Spenard
David E. Spenard

Memorandum Exhibit 1



Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 2

Original SHEET NO. 46K

CANCELLING PSC NO. 1

SHEET NO.

CLASSIFICATION OF SERVICE
Schedule 46 - Net Metering Tariff

LEVEL 1

Application for Interconnection and Net Metering

Use this application form only for a generating facility that is inverter based and certified by a nationally recognized testing laboratory to meet the requirements of UL 1741.

Submit this Application to: Kenergy Corp., P. O. Box 18, Henderson, KY 42419-0018

If you have questions regarding this Application or its status, contact Kenergy at: (270)826-3991

Customer Name: Account Number:

Customer Address:

Customer Phone No.: Customer E-Mail Address:

Project Contact Person:

Phone No.: E-mail Address (Optional):

Provide names and contact information for other contractors, installers, or engineering firms involved in the design and installation of the generating facilities:

Energy Source: Solar Wind Hydro Biogas Biomass

Inverter Manufacturer and Model #:

Inverter Power Rating: Inverter Voltage Rating:

Power Rating of Energy Source (i.e., solar panels, wind turbine):

Is Battery Storage Used: No Yes If Yes, Battery Power Rating:

Attach documentation showing that inverter is certified by a nationally recognized testing laboratory to meet the requirements of UL 1741.

Attach site drawing or sketch showing location of Kenergy's meter, energy source, Kenergy accessible disconnect switch, and inverter.

Attach single line drawing showing all electrical equipment from Kenergy's metering location to the energy source including switches, fuses, breakers, panels, transformers, inverters, energy source, wire size, equipment ratings, and transformer connections.

Expected Start-up Date:

DATE OF ISSUE April 1, 2009
Month / Date / Year

DATE EFFECTIVE April 30, 2009
Month / Date / Year

ISSUED BY [Signature]
(Signature of Officer)

TITLE President and CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2008-00169 DATED January 8, 2009

PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE 4/30/2009 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

By [Signature] Executive Director

Memorandum Exhibit 2 (Redacted)

Application for Interconnection

Use this application form only for a generating facility that is inverter based and certified by a nationally recognized testing Laboratory to meet the requirements of UL 1741.

Submit this Application to:

Kenergy Corp,
P. O. Box 18,
Henderson, KY 42419-0018

If you have questions regarding this Application or its status, contact Kenergy at: (800)844-4832

Member Name: ROGER D SHOCKLEE Account Number: [REDACTED]

Member Address: 666 BARRETT HILL RD. LIVERMORE, KY 42352

Member Phone No.: _____ Project Contact Person: Solar Energy Solutions

Phone No.: _____ E-mail Address (Optional): [REDACTED]

Provide names and contact information for other contractors, installers, or engineering firms involved in the design and installation of the generating Facilities: _____

Solar Energy Solutions

Member E-Mail Address: [REDACTED]

Energy Source: Solar Wind Hydro Biogas Biomass SOLAR

Inverter Manufacturer and Model #: Tesla, Tesla 7.6 kW Inverter, QTY:5

Inverter Power Rating: 7.6 kW, 38.00 kW AC TOTAL KW

Power Rating of Energy Source (ie., solar panels, wind turbine): 51.30 kW, (95) 540W Modules KW

Attach documentation showing that inverter is certified by a nationally recognized testing laboratory to meet the requirements of UL 1741.

Attach site drawing or sketch showing location of Kenergy's meter, energy source, Kenergy accessible disconnect switch, and inverter.

Attach single line drawing showing all electrical equipment from Kenergy's metering location to the energy source including switches, fuses, breakers, panels, transformers, inverters, energy source, wire size, equipment ratings, and transformer connections.

Expected Start-up Date: 12/4/23

Memorandum Exhibit 3 (Redacted)

Application for Interconnection

Use this application form only for a generating facility that is inverter based and certified by a nationally recognized testing Laboratory to meet the requirements of UL 1741.

Submit this Application to:

Kenergy Corp,
P. O. Box 18,
Henderson, KY 42419-0018

If you have questions regarding this Application or its status, contact Kenergy at: (800)844-4832

Member Name: ROGER D SHOCKLEE Account Number: [REDACTED]

Member Address: 666 BARRETT HILL RD. LIVERMORE, KY 42352

Member Phone No.: _____ Project Contact Person: Solar Energy Solutions

Phone No.: _____ E-mail Address (Optional): [REDACTED]

Provide names and contact information for other contractors, installers, or engineering firms involved in the design and installation of the generating Facilities: _____

SOLAR ENERGY SOLUTIONS

Member E-Mail Address: [REDACTED]

Energy Source: Solar Wind Hydro Biogas Biomass SOLAR

Inverter Manufacturer and Model #: Tesla, Tesla 7.6 kW Inverter, QTY:5

Inverter Power Rating: 7.6 kW, 38.00 kW AC TOTAL KW

Power Rating of Energy Source (ie., solar panels, wind turbine): 51.30, (95) 540W Modules KW

Attach documentation showing that inverter is certified by a nationally recognized testing laboratory to meet the requirements of UL 1741.

Attach site drawing or sketch showing location of Kenergy's meter, energy source, Kenergy accessible disconnect switch, and inverter.

Attach single line drawing showing all electrical equipment from Kenergy's metering location to the energy source including switches, fuses, breakers, panels, transformers, inverters, energy source, wire size, equipment ratings, and transformer connections.

Expected Start-up Date: 12/4/23

Memorandum Exhibit 4

APPLICATION AND APPROVAL PROCESS

Applications will be submitted by the Member and reviewed and processed by Kenergy according to either Level 1 or Level 2 processes defined below.

Kenergy may reject an Application for violations of any applicable code, standard, or regulation related to reliability or safety; however, Kenergy will work with the Member to resolve those issues to the extent practicable. Members may contact Kenergy regarding status of an Application or with questions prior to submitting an Application.

An eligible Member-generator shall mean a retail electric Member of Kenergy with a generating facility that:

- (1) Has a rated capacity of not greater than (45) kilowatts for net metering, (100) Kilowatts if the excess is to be sold to Kenergy;
- (2) Is located on the Member's premises;
- (3) Is owned and operated by the Member;
- (4) Is connected in parallel with Kenergy's electric distribution system; and
- (5) Has the primary purpose of supplying all or part of the Member's own electricity requirements.

Should Kenergy determine, in its sole discretion, that the proposed generating facility does not meet all the above criteria, the Kenergy reserves the right to reject the Application and deny service.

LEVEL 1

A Level 1 Application shall be used if the generating facility is inverter-based and is certified by a nationally recognized testing laboratory to meet the requirements of Underwriters Laboratories Standard 1741 "Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources" (UL 1741). Kenergy will approve the Level 1 Application if the generating facility also meets all of the following conditions:

- (1) For interconnection to a radial distribution circuit, the aggregated generation on the circuit, including the proposed generating facility, will not exceed 15% of the Line Section's most recent annual one-hour peak load. A line section is the smallest part of the primary distribution system the generating facility could remain connected to after operation of any sectionalizing devices.
- (2) If the proposed generating facility is to be interconnected on a single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed

generating facility, will not exceed the smaller of 20 kVA or the nameplate rating of the transformer.

- (3) If the proposed generating facility is single-phase and is to be interconnected on a center tap neutral of a 240-volt service, its addition shall not create an imbalance between the two sides of the 240-volt service of more than 20% of the manufacturer's rating of the service transformer.
- (4) If the generating facility is to be connected to three-phase, three wire primary utility distribution lines, the generator shall appear as a phase-to-phase connection at the primary utility distribution line.
- (5) If the generating facility is to be connected to three-phase, four wire primary utility distribution lines, the generator shall appear to the primary utility distribution line as an effectively grounded source.
- (6) The interconnection will not be on an "area" or "spot network". "Area" and "spot networks" are systems in which multiple transformers are interconnected on the secondary side and multiple primary voltage circuits are used to feed the transformers. A "spot network" is typically used to serve a single building and all the transformers are in one location. An "area network" typically serves multiple members with secondary conductors covering multiple city blocks and with transformers at various locations.
- (7) Kenergy does not identify any violations of any applicable provisions of Institute of Electrical and Electronics Engineers Standard 1547(IEEE 1547), "Standard for Interconnecting Distributed Resources with Electric Power Systems."
- (8) No construction of facilities by Kenergy on its own system will be required to accommodate the generating facility.

If the generating facility does not meet all of the above listed criteria, Kenergy, in its sole discretion, may either: 1) approve the generating facility under the Level 1 Application if Kenergy determines that the generating facility can be safely and reliably connected to Kenergy's system; or 2) deny the Application as submitted under the Level 1 Application.

Kenergy shall notify the Member whether the Application is approved or denied, based on the criteria provided in this section.

If the Application lacks complete information, Kenergy shall notify the Member that additional information is required, including a list of such additional information. The time between notification and receipt of required additional information will add to the time to process the Application.

The approval will be subject to successful completion of an initial installation inspection and witness test. The Member shall notify Kenergy within 3 business days of completion of the generating facility installation and schedule an inspection and witness test with Kenergy to occur within 10 business days of completion of the generator facility installation or as otherwise agreed to by Kenergy and the Member. The Member may not operate the generating facility until successful completion of such inspection and witness test, unless

Kenergy expressly permits operational testing not to exceed two hours. If the installation fails the inspection or witness test due to noncompliance with any provision in the Application and Kenergy approval, the Member shall not operate the generating facility until any and all noncompliance is corrected and re-inspected by Kenergy.

If the Application is denied, Kenergy will supply the Member with reasons for denial. The Member may resubmit under Level 2 if appropriate

LEVEL 2

A Level 2 Application is required under any of the following:

- (1) The generating facility is not inverter based;
- (2) The generating facility uses equipment that is not certified by a nationally recognized testing laboratory to meet the requirements of UL, 1741; or
- (3) The generating facility does not meet one or more of the additional conditions under Level 1. Kenergy will approve the Level 2 Application if the generating facility meets Kenergy's technical interconnection requirements, which are based on IEEE 1547.

Kenergy will process the Level 2 Application within 30 business days of receipt of a complete Application. Within that time Kenergy will respond in one of the following ways:

- (1) The Application is approved and Kenergy will provide the Member with an interconnection Agreement to sign.
- (2) If construction or other changes to Kenergy's distribution system are required, the cost will be the responsibility of the Member. Kenergy will give notice to the Member and offer to meet to discuss estimated costs and construction timeframe. Should the Member agree to pay for costs and proceed, Kenergy will provide the Member with an interconnection Agreement to sign within a reasonable time.
- (3) The Application is denied. Kenergy will supply the Member with reasons for denial and offer to meet to discuss possible changes that would result in Kenergy approval. Member may resubmit Application with changes.

If the Application lacks complete information, Kenergy shall notify the Member that additional information is required, including a list of such additional information.

The Member may not operate the generating facility until an Interconnection Agreement is signed by the Member and all necessary conditions stipulated in the agreement are met.

TERMS AND CONDITIONS FOR INTERCONNECTION

To interconnect to Kenergy's distribution system, the Member's generating facility shall comply with the following terms and conditions:

- (1) Kenergy shall provide the Member metering services, without charge for standard metering equipment, through a standard kilowatt-hour metering system capable of measuring the flow of electricity in two (2) directions. If the Member requests any additional meter or meters or distribution upgrades are needed to monitor the flow in each direction, such installations shall be at the Member's expense.
- (2) The Member shall install, operate, and maintain, at Member's sole cost and expense, any control, protective, or other equipment on the Member's system required by Kenergy's technical interconnection requirements based on IEEE 1547, the National Electric Code "NEC", accredited testing laboratories such as Underwriters Laboratories, and the manufacturer's suggested practices for safe, efficient and reliable operation of the generating facility is parallel with Kenergy's electric system. Member shall bear full responsibility for the installation, maintenance and safe operation of the generating facility. Upon reasonable request from Kenergy, the Member shall demonstrate generating facility compliance.
- (3) The generating facility shall comply with, and the Member shall represent and warrant its compliance with: (a) any applicable safety and power quality standards established by IEEE and accredited testing laboratories such as Underwriters Laboratories; (b) the NEC as may be revised from time to time; (c) Kenergy's rules, regulations, and Kenergy's Service Regulations as contained in Kenergy's Retail Electric Tariff as may be revised from time to time with the approval of the Kentucky Public Service Commission (Commission); (d) the rules and regulations of the Commission, as such rules and regulations may be revised from time to time by the Commission; and (e) all other applicable local, state, and federal codes and laws, as the same may be in effect from time to time. Where required by law, Member shall pass an electrical inspection of the generating facility by a local authority having jurisdiction over the installation.
- (4) Any changes or additions to Kenergy's system required to accommodate the generating facility shall be considered excess facilities. Member shall agree to pay Kenergy for actual costs incurred for all such excess facilities prior to construction.
- (5) Member shall operate the generating facility in such a manner as not to cause undue fluctuations in voltage, intermittent load characteristics or otherwise interfere with the operation of Kenergy's electric system. At all times when the generating facility is being operated in parallel with Kenergy's electric system, Member shall so operate the generating facility in such a manner that no adverse impacts will be produced thereby to the service quality rendered by Kenergy to any of its other Members or to any electric system interconnected with Kenergy's electric system. Member shall agree that the interconnection and operation of the generating facility is secondary to, and shall not interfere with, Kenergy's ability to meet its primary responsibility of furnishing reasonably adequate service to its Members.
- (6) Member shall be responsible for protecting, at Member's sole cost and expense, the generating facility from any condition or disturbance on Kenergy's electric system, including, but not limited to, voltage sags or swells, system faults, outages, loss of a single phase of supply, equipment failures, and lightning or switching surges, except that Kenergy shall be

responsible for repair of damage caused to the generating facility resulting solely from the negligence or willful misconduct on the part of Kenergy.

- (7) After initial installation, Kenergy shall have the right to inspect and/or witness commissioning tests, as specified in the Level 1 or Level 2 Application and approval process. Following the initial testing and inspection of the generating facility and upon reasonable advance notice to Member, Kenergy shall have access at reasonable times to the generating facility to perform reasonable onsite inspections to verify that the installation, maintenance, and operation of the generating facility comply with the requirements of this tariff.
- (8) For Level 1 and 2 generating facilities, where required by Kenergy, an eligible Member shall furnish and install on Member's side of the point of common coupling a safety disconnect switch which shall be capable of fully disconnecting the Member's energy generating equipment from Kenergy's electric service under the full rated conditions of the Member's generating facility. The external disconnect switch (EDS) shall be located adjacent to Kenergy's meters or the location of the EDS shall be noted by placing a sticker on the meter, and shall be of the visible break type in a metal enclosure which can be secured by a padlock. If the EDS is not located directly adjacent to the meter, the Member shall be responsible for ensuring that the location of the EDS is properly and legibly identified for so long as the generating facility is operational. The disconnect switch shall be accessible to Kenergy personnel at all times. Kenergy may waive the requirement for an EDS for a generating facility at its sole discretion, and on a case-by-case basis, upon review of the generating facility operating parameters and if permitted under Kenergy's safety and operating protocols. Kenergy shall establish a training protocol for line workers on the location and use of the EDS, and shall require that the EDS be used when appropriate, and that the switch be turned back on once the disconnection is no longer necessary.
- (9) Kenergy shall have the right and authority at Kenergy's sole discretion to isolate the generating facility or require the Member to discontinue operation of the generating facility if Kenergy believes that: (a) continued interconnection and parallel operation of the generating facility with Kenergy's electric system creates or contributes (or may create or contribute) to a system emergency on either Kenergy's or Member's electric system; (b) the generating facility is not in compliance with the requirements of this agreement, and the noncompliance adversely affects the safety, reliability, or power quality of Kenergy's electric system; or (c) the generating facility interferes with the operation of Kenergy's electric system. In non-emergency situations, Kenergy shall give Member notice of noncompliance including a description of the specific noncompliance condition and allow Member a reasonable time to cure the noncompliance prior to isolating the generating facilities. In emergency situations, when Kenergy is unable to immediately isolate or cause the Member to isolate only the generating facility, Kenergy may isolate the Member's entire facility.
- (10) Member shall agree that, without the prior written permission from Kenergy, no changes shall be made to the generating facility as initially approved. Increases in generating facility capacity will require a new "Application for Interconnection" which will be evaluated on the same basis as any other new application. Repair and replacement of existing generating facility components with like components that meet UL 1741 certification requirements for

Level 1 facilities and not resulting in increases in generating facility capacity is allowed without approval.

- (11) To the extent permitted by law, the Member shall protect, indemnify, and hold harmless Kenergy and its directors, officers, employees, agents, representatives and contractors against and from all loss, claims, actions or suits, including costs and attorney's fees, for or on account of any injury or death of persons or damage to property caused by the Member or the Member's employees, agents, representatives and contractors in tampering with, repairing, maintaining, or operating the Member's generating facility or any related equipment or any facilities owned by Kenergy except where such injury, death or damage was caused or contributed to by the fault or negligence of Kenergy or its employees, agents, representatives, or contractors. The liability of Kenergy to the Member for injury to person and property shall be governed by the tariff(s) for the class of service under which the Member is taking service.
- (12) The Member shall maintain general liability insurance coverage (through a standard homeowner's, commercial, or other policy) for both Level 1 and Level 2 generating facilities. Member shall, upon request, provide Kenergy with proof of such insurance at the time that application is made.
- (13) By entering into an Interconnection Agreement, or by inspection, if any, or by non-rejection, or by approval, or in any other way, Kenergy does not give any warranty, express or implied, as to the adequacy, safety, compliance with applicable codes or requirements, or as to any other characteristics, of the generating facility equipment, controls, and protective relays and equipment.
- (14) A Member's generating facility is transferable to other persons or service locations only after notification to Kenergy has been made and verification that the installation is in compliance with this tariff. Upon written notification that an approved generating facility is being transferred to another person, Member, or location, Kenergy will verify that the installation is in compliance with this tariff and provide written notification to the Member(s) within 20 business days. If the installation is no longer in compliance with this tariff, Kenergy will notify the Member in writing and list what must be done to place the facility in compliance.
- (15) The Member shall retain any and all Renewable Energy Credits (RECs) that may be generated by their generating facility.

Application for Interconnection

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Submit this Application to:

Email (sheath@kenergycorp.com) Or mail Kenergy Corp,
P. O. Box 18,
Henderson, KY 42419-0018

If you have questions regarding this Application or its status, contact Kenergy at: (800)844-4832

Name: _____ Account Number: _____

Address: _____

Phone No.: _____ Email Address: _____

Project Contractor: _____

Contractor Phone No.: _____

Provide names and contact information for other contractors, installers, or engineering firms involved in the design and installation of the generating Facilities: _____

Energy Source: Solar Wind Hydro Biogas Biomass

Inverter Manufacturer and Model #: _____

System total Power Rating (Sum of all inverters): _____ KW

Power Rating of Energy Source (ie., solar panels, wind turbine): _____ KW

In addition to this application please include the following.

- (1) Documentation showing that inverter is certified by a nationally recognized testing laboratory to meet the requirements of UL 1741.
- (2) A site drawing or sketch showing location of Kenergy's meter, energy source, Kenergy accessible disconnect switch, and inverter.
- (3) A single line drawing showing all electrical equipment from Kenergy's metering location to the energy source including switches, fuses, breakers, panels, transformers, inverters, energy source, wire size, equipment ratings, and transformer connections.
- (4) Proof of property ownership (copy of tax bill will suffice)
- (5) Proof of liability insurance on the generating facility

Expected Start-up Date: _____

Memorandum Exhibit 5

Application for Interconnection

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Email (sheath@kenenergycorp.com) Or mail Kenenergy Corp,
P. O. Box 18,
Henderson, KY 42419-0018

If you have questions regarding this Application or its status, contact Kenenergy at: (800)844-4832

Name: _____ Account Number: _____

Address: _____

Phone No.: _____ Email Address: _____

Project Contractor: _____

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Inverter Manufacturer and Model #: _____

System total Power Rating (Sum of all inverters): _____ KW

Power Rating of Energy Source (ie., solar panels, wind turbine): _____ KW

In addition to this application please include the following.

- (1) Documentation showing that inverter is certified by a nationally recognized testing laboratory to meet the requirements of UL 1741.
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- (4) Proof of property ownership (copy of tax bill will suffice)
- (5) Proof of liability insurance on the generating facility

Expected Start-up Date: _____