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PUBLIC SERVICE
COMMISSION

February 27, 2024

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 Reply to Defendant's Verified Response. 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,

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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)	

**COMPLAINANT’S REPLY TO
DEFENDANT’S VERIFIED RESPONSE**

Comes now Roger D. Shocklee, Complainant, by and through counsel, and, pursuant to 807 KAR 5:001, Section 5(3), files this Reply to the Response of Kenergy Corp.’s Verified Response to Complainant’s Motion for Summary Disposition and Memorandum Filed February 16, 2024 (“Kenergy” and “Verified Response”). In reply to certain points raised in the Verified Response, Complainant states the following.¹

- 1. Kenergy’s concedes that it did not conduct a complete review of Complainant’s applications; the incomplete review is in violation of the Kenergy’s Commission-approved tariff.**

Kenergy asserts:

There is also no obligation for Kenergy to continue to review the application and each of the requirements once Kenergy determines that the application does not meet one of the necessary requirements.²

¹ Lack of comment upon any other points should not be construed as a concession.

² Verified Response at unnumbered page 3.

Kenergy's Commission-approved tariff states:

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

Kenergy clearly undertook a review of Mr. Shocklee's applications and seeks to rely upon that review in defending its actions through the defense that it would have ultimately denied the applications. Upon undertaking a review of the merits of the applications, whether each application should be approved or denied, Kenergy's Commission-approved tariffs expressly control the review and require Kenergy to supply the reasons for denial, not simply a reason for denial.

2. Kenergy's discussion of the changes to its Commission-approved application form demonstrates Kenergy's use of a policy that varies from its Commission-approved tariffs.

Kenergy's Rules and Regulations for an application for electric service do not require a demonstration of property ownership.³ Kenergy's Application for Membership does not require demonstration of property ownership.⁴ At pertinent part, an applicant for membership and service is required to agree to act regarding "the property owned or

³ *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*, 1st Revised Sheet No. 111 (hereinafter "Tariff Sheet No. ____").

⁴ See Complaint, Exhibit E; see also Kenergy's Answer at Section II, Numbered Paragraph 28 admitting the form documented at Exhibit E of the Complaint is the membership application.

occupied by me [the prospective member].”⁵ Kenergy’s Commission-approved application form for net metering does not require a demonstration of property ownership.

Kenergy, in discussing its change to its net metering application form, asserts:

The application format change highlights **issues that have evolved** as Kenergy has practically applied the requirements of the statute and its tariff, such as the issue of property ownership and applications that request more capacity than the statute allows (emphasis added).⁶

Kenergy submits the following testimony:

Q. EXPLAIN HOW THE APPLICATION OF KENERGY’S TARIFF AND KRS 278.465 HAS **EVOLVED** AS KENERGY’S EXPERIENCE WITH NET METERING APPLICATION HAS INCREASED (emphasis added).

A. Kenergy would take the word of the member in the past. Due to this matter and other recent concerns, we have begun to require documentation.

Kenergy, additionally, submits the following testimony:

Q. EXPLAIN HOW APPLYING KENERGY’S TARIFF AND KRS 278.465 HAS **EVOLVED** AS KENERGY’S EXPERIENCE WITH NET METERING APPLICATION HAS INCREASED.

A. Kenergy, in the past, has simply taken the word of the customer as to the ownership of the property in question, however Kenergy has recently required documentation.⁷

Kenergy (acknowledging that it acted based upon an evolution or change in conditions) changed its policies and procedures to require use of an application form other than the Commission-approved form. Kenergy acknowledges that this change in

⁵ Complaint, Exhibit E - Application for Membership, 2(b).

⁶ Verified Response at unnumbered page 5.

⁷ Verified Response, Exhibit B, Testimony of Scott Heath at page 6.

application forms requires Commission approval that was not sought until after the filing of the Complaint in the instant case.⁸

The evolution that Kenergy identifies is moving from a utility that does not require demonstration of property ownership as a condition of membership to a utility that has chosen to add a demonstration of property ownership as a condition of applying for net metering service. Kenergy does not demonstrate a foundation in the text of its Commission-approved tariffs or other regulatory requirements for its change to new (evolved) policies and practices. Kenergy acknowledges that its change in policies and practices require Commission approval which was not sought (and has not been obtained).

3. Kenergy’s discussion of “customer’s premises” versus “customer premises” identifies a distinction without a difference.

The logical extension of Kenergy’s position in its argument that “customer’s premises” requires property ownership is that Kenergy is without authority to provide electric service to a renter of property (whether a tenant of a separately metered apartment under lease or a tenant of a separately metered commercial property under lease) because the property is not owned by the renter. Kenergy seeks to contain the force and effect of the logic of its argument through a suggestion that “customer’s premises” has a unique definition in the context of KRS 278.465 separate from how that phrase is understood for KRS Chapter 278 and the Commission’s administrative regulations.⁹ The General Assembly did not seek to establish the difference suggested

⁸ Verified Response at unnumbered page 5.

⁹ Verified Response at unnumbered page 3.

for KRS 278.465. The discussion of the phrases in the Verified Response establishes a distinction without a difference.

4. Kenergy's discussions of the Fifteen (15) Percent screening metric and its newly identified claim concerning a 20 kVA nameplate rating of a transformer have numerous flaws.

Kenergy continues to seek an excusal from its failure to follow its Commission-approved tariffs by arguing that it would have denied the applications in any event. Kenergy's own evidence supplied in its Verified Response refutes its own position. Specifically, Mr. Stumph testifies:

Q. EXPLAIN WHY THE APPLICATIONS AT ISSUE WOULD FAIL DUE TO THE 15% RULE.

A. Based upon Kenergy's most recent annual peak load, there is only 42.5 KW capacity available. The applications, in total are for 76 KW AC. **If, only one application was submitted, there would be sufficient capacity at present (emphasis added).**

Mr. Stumph further testifies:

Q. EXPLAIN HOW KENERGY'S TARIFF, SHEET 46D PARAGRAPH (8), WHICH STATES "NO CONSTRUCTION OF FACILITIES BY KENERGY ON ITS OWN SYSTEM WILL BE REQUIRED TO ACCOMMODATE THE GENERATING FACILITY," DOES OR DOES NOT APPLY TO THE APPLICATIONS AT ISSUE HEREIN.

A. With only 42.5 KW of solar allowed, only one of the two applications could possibly be allowed. **In that circumstance, no construction of facilities would be necessary (emphasis added).**¹⁰

Hence, by reference to Kenergy's own evidence and without suggesting that Kenergy's overall theory is correct, Kenergy' ultimate denial defense works only if the

¹⁰ Verified Response, Exhibit A, Direct Testimony of Mr. Stumph at page 7.

applications are combined for review rather than considered separately. Otherwise stated: by reference to Kenergy's own testimony, Kenergy has sufficient capacity at present to allow an interconnection and, as importantly, no construction of facilities would be necessary for that interconnection. Kenergy, therefore, refutes the allegations in its own argument that there was no harm because both applications would have been denied - through acknowledging in its testimony filed with the Verified Response that sufficient capacity exists and the absence of the need for construction.

Kenergy concedes, among other things, that at least one (1) application satisfies the Fifteen (15) Percent screening metric (the "15 Percent Metric"). As importantly, Kenergy fails to point to any language in its net metering tariff that disallows an otherwise eligible interconnection because the same customer submits a separate application that is alleged to not be eligible.

Kenergy, perhaps realizing that its own evidence supplied with the Verified Response eviscerates its ultimate denial defense based upon the 15 Percent Metric, now interjects, for the first time, a new claim regarding the nameplate rating of the transformer.

Kenergy's net metering tariff includes the following screening provision.

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.¹¹

Kenergy now asserts the following through Mr. Stumph's testimony.

Q. EXPLAIN THE PRACTICAL CONCERNS THAT KENERGY HAS ABOUT CUSTOMERS THAT SEEK ADDITIONAL METERS BEYOND WHAT IS SUFFICIENT TO SUPPLY POWER TO FACILITIES ON THE PROPERTY.

¹¹ Kenergy First Revised Tariff Sheet No. 46C (2).

A. There are two issues. One, a member applying for two arrays, and then splitting their service into two meters, is circumventing the intent of the tariff, whereby 45KW has been established as the maximum array size. The second issue is that Schedule 46C, paragraph (2) states that a maximum of 20 KVA of solar arrays can be installed on a shared secondary. Our experience has been that members who want to install a second meter intend to install far more than 20 KVA of solar arrays.

Noticeable in Mr. Stumph's testimony is a general discussion of net metering. Mr. Stumph does not apply the 20 kVA screening metric to the facts attending to either or both of Complainant's applications. He supports his discussion by reference to customers other than Complainant and does not address whether either or both of Complainant's applications would have failed to satisfy this Kenergy screening metric. Setting aside for the moment that the introduction of testimony concerning the 20 kVA screening metric is yet another recharacterization and modification of Kenergy's position, it is not demonstrated to be relevant to one or both of the applications at issue.

As to the legal issues presented through the Complaint, neither Mr. Stumph nor Mr. Heath state that he is licensed to practice law in the Commonwealth of Kentucky. Neither are qualified or competent to offer legal opinions. Their offer of opinions concerning the legal issues in the instant action cannot be afforded any weight.

WHEREFORE, Complainant respectfully tenders his Reply and asks the Commission to enter an Order granting summary disposition of this Complaint and require Kenergy to accept the two (2) applications for interconnection is unlawfully rejected – at least one (1) of which by reference to Kenergy's own evidence should have been approved for interconnection.

Respectfully submitted,

/s/ David E. Spenard

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Counsel for Roger D. Shocklee

Notice And Certification For Filing

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 27th day of February 2024, in conformity with the Commission's January 5, 2024 Order of procedure 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.

/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