

SEP 17 2024

PUBLIC SERVICE  
COMMISSION

September 17, 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 Renewed Motion for Disposition in Favor of Complainant Based Upon the Existing Record. 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 obscured 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  
David E. Spenard  
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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	)	

**RENEWED MOTION FOR 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 renews his motion for the Kentucky Public Service Commission (“PSC” or “Commission”) to enter an order of disposition of Complaint in the instant case in favor of Complainant and based upon the existing record. In support of his motion, Complainant states the following.

## SUMMARY OF THE FACTUAL BACKGROUND<sup>1</sup>

Complainant is (since 1993) a member of Kenergy Corp. (“Kenergy”), and he has multiple service accounts with Kenergy. These facts are admitted by Kenergy.<sup>2</sup> Through form applications for interconnection (forms provided by Kenergy), Complainant tendered two (2) applications for interconnection.<sup>3</sup> The applications were rejected.

Through a November 30, 2023 letter from Rob Stumph, P.E., Vice President, Eng./Ops., Kenergy documented the reason for the rejection.<sup>4</sup> 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.”<sup>5</sup>

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<sup>1</sup> A comprehensive factual background, supported by documentation, is set forth in the Complaint (tendered Dec. 18, 2023) augmented through subsequent pleadings including his Response to Commission Staff’s First Request for Information (filed Feb. 15, 2024); his initial Motion for Summary Disposition (filed Feb. 16, 2024); and his Reply to Kenergy’s Response (filed Feb. 27, 2024). Complainant incorporates those facts and documents into this pleading by reference.

<sup>2</sup> See Kenergy Corp.’s Answer (filed Jan. 12, 2024), Numbered Paragraph 1 (Hereinafter “Answer, Paragraph \_\_\_\_.”)

<sup>3</sup> 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.

<sup>4</sup> 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.”).

<sup>5</sup> Complaint, Exhibit D.

Mr. Stumph's November 30, 2023 letter, which speaks for itself, does not suggest that Complainant had any further recourse with Kenergy or that Kenergy's position was anything other than fixed. Having had his applications definitively rejected by Kenergy, Complainant filed the formal complaint in the instant proceeding.

#### **SUMMARY OF 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.<sup>6</sup> Kenergy filed its Answer to the Complaint on January 12, 2024.

Commission Staff propounded requests for information to Complainant for which responses were filed.<sup>7</sup> Staff also propounded requests for information to Kenergy for which responses were filed.<sup>8</sup> Separate from its actions in this proceeding, Kenergy attempted to remediate its rejection in the absence of Complainant through a proposed tariff filing containing "new requirements for applying for interconnection to Kenergy's distribution system," including, among other things, proof of "property ownership in the

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<sup>6</sup> Order (Ky. P.S.C. Jan. 1, 2024), page 1.

<sup>7</sup> Complainant's Response to Commission Staff's First Request for Information (filed Feb. 15, 2024).

<sup>8</sup> Kenergy's Response to Commission Staff's First Request for Information (filed Mar. 14, 2024).

form of a deed or tax bill.”<sup>9</sup> Kenergy’s tariff filing in Case No. TFS2024-99108 was rejected for filing.<sup>10</sup>

Separate from this proceeding, the Commission entered a declaratory order concerning a condition under Kenergy’s Net Metering Tariff for Level 1 Interconnection.<sup>11</sup> The declaratory order (in Case No. 2023-00309) does not construe the legal issues presented through the instant Complaint, and Kenergy has advised, through Counsel, that it does not see any Kenergy response in the instant case that requires an update based upon the Commission’s declaration in Case No. 2023-00309.

The Commission’s Orders in Case Numbers 2024-00066 and 2023-00309 are each final in that the time for filing a petition for rehearing has expired and an examination of the docket in the Franklin Circuit Court demonstrates that there are no actions for judicial review of these Orders pending in the circuit court.

#### **RENEWED REQUEST FOR DISPOSITION**

Complainant incorporates, by reference, and reasserts his arguments from his Motion for Summary Disposition and Reply to Kenergy’s Verified Response.<sup>12</sup> The plain language of KRS 278.465(1) is unambiguous and clearly does not require fee simple

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<sup>9</sup> Case No. 2024-00066, *Electronic Application of Kenergy Corp. for a Deviation From 807 KAR 5:011, Section 8(2)*, (Ky. P.S.C. Apr. 9, 2024) at page 1. The tariff filing and the foregoing Order appear as Appendix Items “A” and “B” to this renewed motion.

<sup>10</sup> Case No. 2024-00066, Order (Ky. P.S.C. Apr. 9, 2024) at page 4.

<sup>11</sup> Case No. 2023-00309, *Electronic Petition of Kenergy Corp For a Declaratory Order*, (Ky. P.S.C. Aug. 6, 2024) at page 1. Complainant’s written response for Case No. 2023-00309 and the foregoing Order appear as Appendix Items “C” and “D” to this renewed motion.

<sup>12</sup> Motion for Summary Disposition (filed Feb. 16, 2024); Reply to Kenergy Corp. Verified Response (filed Feb. 27, 2024).

ownership by the applicant of the property serving as the applicable customer's premises.<sup>13</sup> For this reason, Kenergy's rejection of Complainant's applications for interconnection is unlawful.

While Kenergy has sought to explain its conduct through a variety of factual allegations that have no bearing upon the pertinent legal issue,<sup>14</sup> resolution of the legislative intent for KRS 278.465 through KRS 278.468 does not require an evidentiary hearing. Indeed, there are only a few facts pertinent to the instant proceeding.

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."<sup>15</sup>

Mr. Strump's statement is an admission by a party opponent. There is no facet of due process through which Kenergy has an entitlement to cross-examine its own evidence. The stated reason for Kenergy's rejection is uncontested and is in violation of KRS Chapter 278, the Commission's administrative regulations, and Kenergy's tariffs.

Separate from the fact that the plain language of KRS 278.465(1) is unambiguous and clearly does not require fee simple ownership by the applicant (for interconnection)

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<sup>13</sup> Memorandum in Support of Motion for Summary Disposition (filed Feb. 16, 2024) at pages 5 through 9.

<sup>14</sup> The various allegations have been addressed through Complainant's other pleadings in this proceeding including his Responses to Commission Staff's First Request for Information (filed Feb. 15, 2024) (for example, Item 1(d)) and the Reply to Kenergy Corp. Verified Response (filed Feb. 27, 2024).

<sup>15</sup> Complaint, Exhibit D.

of the property serving as the applicable customer's premises, Kenergy's tariffs did not (and still do not) contain a requirement of proof of fee simple ownership of the real property upon which the eligible customer-generator is proposed for operation.

The following findings from Case No. 2024-00066 are final and binding upon Kenergy.

Changing what applicants must include with their interconnection applications constitutes a change in the conditions of service that affects the rendering of a customer's service under 807 KAR 5:011, Section 8.

...

Providing proof of liability insurance as well as a **deed or tax bill are also new prerequisites** (Emphasis added).<sup>16</sup>

Kenergy violated KRS 278.160 ("The Filed Rate Doctrine") by imposing upon Complainant a requirement of property ownership that was not (and still is not) contained in Kenergy's Commission-approved tariffs.<sup>17</sup> If Kenergy disagreed with the above findings, its recourse was through rehearing in Case No. 2024-00066, which it did not seek, or through an action for judicial review of that Order, which it did not undertake.

Kenergy cannot now collaterally attack these findings through this proceeding. Therefore, the fact that Kenergy's tariffs did not (and do not) require the production of a deed or tax bill has been conclusively settled through a final Commission Order upon a proposal filed by Kenergy. The proof of ownership test Kenergy imposed upon

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<sup>16</sup> Case No. 2024-00066, Order (Apr. 9, 2024) at page 3.

<sup>17</sup> Memorandum in Support of Motion for Summary Disposition (filed Feb. 16, 2024) at pages 9 through 11.

Complainant was unlawful because the condition of service is not part of Kenergy's Commission-approved tariffs.<sup>18</sup>

Pursuant to the terms of the Rural Energy for America Program grant (through the United States Department of Agriculture), Complainant has until July 13, 2025 to **complete** the project. Any funds that are not disbursed by the project completion date will be de-obligated and will not be available for reimbursement.<sup>19</sup> Kenergy's unlawful refusal to accept, process, and act upon Complainant's applications for interconnection (through the terms in Kenergy's Commission-approved tariffs) requires a meaningful remedy through which Complainant's rights are protected.

WHEREFORE, Complainant respectfully moves this Commission to enter an Order granting disposition of this Complaint in favor of Complainant and requiring Kenergy to accept the two (2) applications for interconnection for processing and action through the terms in Kenergy's Commission-approved tariffs.

Respectfully submitted,

/s/ David E. Spenard

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<sup>18</sup> Kenergy's imposition of a new condition of service in the absence of a Commission-approved tariff including the condition of service is unlawful. The non-tariffed condition of service is a separate way through which Kenergy acted unlawfully in this instance.

<sup>19</sup> Appendix Item "E" to this renewed motion.



### **Notice Regarding Privacy Protection for Filings**

Pursuant to 807 KAR 5:001, Section 4(10) (privacy protection for filings), personal information including the taxpayer identification number, digits of unique identifying numbers assigned by a government agency, private electronic mail addresses and electronic mail addresses of non-parties, and private telephone numbers and telephone numbers of non-parties have been obscured.

/s/ David E. Spenard  
David E. Spenard

### **Notice And Certification 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, September 17, 2024, in conformity with the guidance in the requests 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. A courtesy copy of the pleading was transmitted by electronic mail message to attorneys Allyson Honaker and Brittany Koenig,

/s/ David E. Spenard  
David E. Spenard

Appendix Item  
“A”

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

ELECTRONIC APPLICATION OF	)	
KENERGY CORP. TO	)	TARIFF NO.
REVISE ITS TARIFF	)	TFS2024-00____

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**MOTION FOR DEVIATION**

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Comes now Kenergy Corp., (“Kenergy”) by and through the undersigned counsel, pursuant to 807 KAR 5:001, Section 15 and other applicable law, and as grounds for its Motion for Deviation in the above-styled proceeding respectfully states as follows:

1. On February 23, 2024, Kenergy filed through the tariff filing system to revise Schedules 46D, 46Q, and 46K of its tariff, containing Kenergy’s Application for Interconnection and Net Metering (“Application TFS2024-00076”). The purpose of tariff filing TFS2024-00076 was to clarify the Net Metering application review process.
2. The Commission entered a letter on March 12, 2024, rejecting Kenergy’s tariff filing TFS2024-00076.
4. Kenergy states that its original tariff filing was filed on February 23, 2024, which provided the Commission with 30 days’ notice for the March 24, 2024 effective date.
5. With the letter entered into the record, rejecting Kenergy’s February 23, 2024, tariff filing, TFS2024-00076, and therefore, submits a new tariff filing attached, with the proposed effective date of April 13, 2024.

6. Kenergy moves the Commission to allow Kenergy's revised tariff to take effect April 12, 2024, and allow Kenergy a deviation from 807 KAR 5:011, Section 8 that requires notice be given if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of service. The Commission has indicated that the proposed revisions are "adding conditions of service to the tariff that would affect the quality, delivery, or rendering of service." Kenergy does not agree that any conditions of service are being added, however out of an abundance of caution, Kenergy provided public notice of the changes on its website and at their office. Kenergy requests that the Commission grant deviation, pursuant to 807 KAR 5:011, Section 15, from 807 KAR 5:011, Section 8(2)(b), which sets forth the acceptable methods of notice to customers and to accept the notice on its website and at its office. .

5. Kenergy believes that its amended tariff, simply clarifies procedures already codified in regulations and legislation. The statutory and regulatory requirements remain unchanged.

6. Regarding the addition of the text listed at (9) on Schedule 46D, the additional statement indicates that members must follow the existing requirements and not attempt to circumvent the limit of 45kW. The addition to the application is not an additional requirement, but instead an admonition to clarify that some members applying for Schedule 46D are have attempted to split an otherwise adequately served account, without additional load, in order to install more than the 45kW limit. Kenergy supports the addition of language in its tariff to its Net Metering Application to directly address the concern that members must follow the existing requirements. It is not an additional requirement.

7. No additional requirements are made through the tariff filing regarding Schedule 46D, including the different text and reconfiguration of the application on Schedules 46K and 46Q. The additional text provides clarification and examples of the documents that show proof of ownership, which has been required to show that the subject property of the application is the “customer’s premises” as already required by KRS 278.465 and the tariff. The revisions are clarifying the requirements that were already in place and that members have failed to comply with in practical application of the same requirements that were already in place. For example, the inspections discussed were already required pursuant to 815 KAR 35:020. Electrical inspections, which states:

Section 3. Electrical Inspections. (1) Except as provided in subsection (2) of this section, the department or a local certified electrical inspector having jurisdiction shall inspect each electrical construction, installation, alteration, or repair to ensure compliance with NFPA 70, the National Electrical Code, incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety.

A state licensed inspection to verify National Electric Code compliance has always been required. In application of Kenergy’s Tariff, there have been members who thought that they did not need an electrical inspection for their solar array installation. The new language clarifies that the electrical inspection is needed, and the Kenergy site verification is also required, however the customer is permitted to operate their system prior to Kenergy’s site verification.

8. Placing public notice in *Kentucky Living* at the soonest opportunity could not take place until May based upon the timing of the rejection letter and the deadlines required to publish notice in *Kentucky Living*. Publication in *Kentucky Living* is the most economical option, additionally, notice of the changes proposed only affects a small subset of members, making it unreasonable to place the burden of the cost of publishing full notice in local newspapers upon all

of Kenergy's members. Placing public notice of the proposed changes on its website and at its offices will sufficiently comply with the intent of the notice requirement, as Kenergy's members are just as likely, if not more likely to view the notice on its website or at its offices; as, for example, the member is paying their bill or contacting Kenergy for other reasons, as they are likely to view the notice in a local newspaper or *Kentucky Living*.

9.. Because the proposed revisions do not add any requirements, Kenergy is not changing or initiating a charge, fee or rule regarding the provision of service that will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.<sup>1</sup> However, because the Commission disagrees, Kenergy requests a deviation as allowed pursuant to 807 KAR 5:011 Section 15, for good cause, from the customer notice requirements contained in 807 KAR 5:011 Section 8 and allow the posting of customer notice at its office as well as on its website to be sufficient customer notice.

WHEREFORE, based on the foregoing, Kenergy requests a deviation of the notice requirement in 807 KAR 5:011 Section 8(2)(b) pursuant to 807 KAR 5:001, Section 15.

Dated this 13th day of March 2024.

Respectfully submitted,

  
\_\_\_\_\_  
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Brittany Hayes Koenig  
Heather S. Temple  
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<sup>1</sup> 807 KAR 5:011, Section 8.

*Counsel for Kenergy Corp.*

**CERTIFICATE OF SERVICE**

This is to certify that foregoing electronic filing was transmitted to the Commission on March 13, 2024; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, no paper copies of the filing will be made.

  
\_\_\_\_\_  
*Counsel for Kenergy Corp.*

## PUBLIC NOTICE

On March 13, 2024, Kenergy Corp. filed with the Kentucky Public Service Commission ("Commission"), a tariff revision for the Schedules 46D, 46Q, and 46K. The proposed effective date for the tariff is April 12, 2024, which may be pushed back due to the timing of this notice. The proposed revision effects Schedules 46D, 46Q, and 46K ("tariff") and Kenergy's Application for Interconnection and net Metering ("application"). The tariff and application are being amended to clarify the application review process. The original version did not anticipate the confusion over the interpretation of the requirements of KRS 278.465 that are mirrored in Kenergy's tariff or that there would be attempts to exceed the capacity limits.

The changes include:

A) Sheet 46D: the addition of the clarifying statements:

(9) "An adequately served account shall not be permitted to be subdivided into multiple accounts in an attempt to circumvent the 45 KW statutory limit."

"When approved, Kenergy will notify the Customer by phone or Email. The final approval will be subject to successful completion of an initial installation inspection and witness test. The Customer shall notify Kenergy within 3 business days of completion of the generating facility inspection by an electrical inspector. Kenergy will perform a witness test within 10 business days of completion of the generator facility installation or as otherwise agreed to by Kenergy and the Customer. If the installation fails the inspection or witness test due to noncompliance with any provision in the Application and Kenergy approval, the Customer shall not operate the generating facility until any and all noncompliance is corrected and re-inspected by Kenergy. Upon successful completion of the witness test Kenergy will install a meter capable of bi-directional flow and the application process is considered complete."

B) Sheet 46K: The format of the application has been arranged differently and the additions of noting evidence of liability insurance and proof of property ownership is used to determine the property is the "customer's premises."

"...(4) Attach proof of liability insurance.

(5) Attach proof of property ownership (copy of deed or tax bill)"

C) Sheet 46Q: The "Kenergy Approval Process" has been edited and reorganized as follows:

Pre-Inspection operational testing not to exceed two hours:

Unless otherwise notified a generating facility may be tested for up to two hours prior to inspection by the electrical inspector

Final approval:

The Customer shall provide proof of the passed electrical inspection of the generating facility within three days of its passage.

Kenergy will exchange the metering of the facility for one capable of bi-directional flow within 10 business days of receipt of the passed electrical inspection for the generating facility.

Application for Interconnection and net Metering is considered approved upon installation by Kenergy of a meter capable of bi-directional flow.

You may examine this tariff filing at the offices of Kenergy located at 3111 Fairview Drive, Owensboro, Kentucky 42303. This tariff filing may also be examined at the offices of the Commission located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the Commission's Web site at <http://psc.ky.gov>. Any comments regarding this tariff filing may be submitted to the Commission through its Web site or by mail to the Public Service Commission, P. O. Box 615, Frankfort, Kentucky 40602.



The proposals contained in this notice are the items being proposed by Kenergy, however, the Commission may order a program that differs from the proposed program contained in this notice. The proposed tariff does not amend or revise existing rates of Kenergy and does not include any proposed new rates for Kenergy. Consequently, an analysis of the amount of change in dollars and percentage change or the effect upon an average bill for each customer classification is not provided.

A person may submit a timely written request for intervention to the Commission, P. O. Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party. If the Commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the Commission may take final action on the tariff filing.

Appendix Item  
“B”

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY	)	CASE NO.
CORP. FOR A DEVIATION FROM 807 KAR 5:011,	)	2024-00066
SECTION 8(2)	)	

ORDER

On February 23, 2024, Kenergy Corp. (Kenergy), filed a proposed change to its net metering and interconnection tariff via the online tariff filing system.<sup>1</sup> The proposed tariff included, *inter alia*, new requirements for applying for interconnection to Kenergy’s distribution system. These changes included requiring the customer to provide proof of (1) passed electrical inspection, (2) liability insurance, and (3) property ownership in the form of a deed or tax bill. The revised tariff also interpreted a provision in KRS 278.465 limiting the capacity of a facility for which a customer is applying for interconnection—the revised tariff disallows subdivision of an account to circumvent this capacity limit.

This tariff filing was rejected on March 12, 2024, because Kenergy did not comply with the customer notice provisions set forth in 807 KAR 5:011, Section 8, which requires notice to customers by mail or publication under Section 8(2)(b) “if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.”

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<sup>1</sup> TFS2024-00076, P.S.C. Second Revised Tariff, First Revised Sheets No. 46D, 46K, and 46Q (filed Feb. 23, 2024).

Kenergy refiled the tariff on March 13, 2024,<sup>2</sup> accompanied by a motion for deviation for good cause pursuant to 807 KAR 5:011, Section 15, from the customer notice requirements set forth in 807 KAR 5:011, Section 8. Kenergy posted notice of the proposed tariff changes on its website and at its office. Kenergy argued that (1) no conditions of service were being changed and therefore customer notice should not be required, (2) website notice was sufficient to notify the small subset of customers affected by the change, and (3) the cost of publishing notice is burdensome, with the most economical option not available until May 2024.<sup>3</sup>

Kenergy is a party to two pending cases that deal with ambiguities over its net metering and interconnection tariff and provisions of KRS 278.465. Kenergy applied for a declaratory order in Case No. 2023-00309,<sup>4</sup> interpreting tariff language limiting the aggregated generation on the circuit to 15 percent of a line section's most recent one-hour peak load. Case No. 2023-00421<sup>5</sup> is a complaint case that addresses the same issue plus a disagreement over whether the “located on the customer’s premises” language in KRS 278.465 requires ownership in fee simple to be deemed an eligible customer-generator. Complainant is a lessee. Kenergy also argued, in that case, that

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<sup>2</sup> TFS2024-00108, P.S.C. Second Revised Tariff, First Revised Sheets No. 46D, 46K, and 46Q (filed Mar. 13, 2024).

<sup>3</sup> Motion for Deviation at 3, paragraph 8.

<sup>4</sup> Case No. 2023-00309, *Electronic Petition of Kenergy Corp. for a Declaratory Order* (filed Sept. 13, 2023).

<sup>5</sup> Case No. 2023-00421, *Roger D. Shocklee v. Kenergy Corp.* (filed Dec. 18, 2023).

the complainant should not be allowed to avoid the KRS 278.465 limit on capacity by splitting its facility into two applications.<sup>6</sup>

Having reviewed the record and being fully advised, the Commission finds that Kenergy's motion for deviation from 807 KAR 5:011, Section 8, should be denied. Changing what applicants must include with their interconnection applications constitutes a change in the conditions of service that affects rendering of a customer's service under 807 KAR 5:011, Section 8. Although Kenergy points out that an electric inspection is already required under 815 KAR 35:020, Section 3, providing proof of this inspection is a new condition for rendering service. Providing proof of liability insurance as well as a deed or tax bill are also new prerequisites. Therefore, a deviation would be required from customer notice requirements.

While notice via website is a source that many customers may use when they are seeking out tariff information, only providing notice via the website does not put those who have an interest in the net metering and interconnection tariff on notice that changes have been proposed. Kenergy noted in Case No. 2023-00309 that "[r]ecently, Kenergy has received inquiries about members who desire to install solar equipment on their property,"<sup>7</sup> suggesting that members of the public, who might not otherwise have reason to regularly check the website for tariff changes, may have interest in such changes.

Lastly, the Commission recognizes that publishing notice increases the economic burden on ratepayers and prefers to minimize that burden when possible. Multiple issues raised in Cases No. 2023-00309 and 2023-00421 are sought to be resolved by this tariff

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<sup>6</sup> Case No. 2023-00421, Kenergy Corp.'s Response to Complainant's Motion for Summary Disposition (filed Feb. 23, 2024), Direct Testimony of Robert Stumph, at 8.

<sup>7</sup> Case No. 2023-00309, Petition (filed Sept. 13, 2023) at 2.

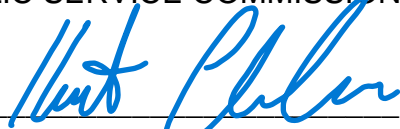
filing. However, the resolution of those cases may necessitate additional tariff changes or preclude certain changes. The most economical option is to allow the Commission to resolve the issues raised in those cases, file a new tariff in conformity with the final orders in those cases, and only bear the cost of one tariff filing notice.

IT IS THEREFORE ORDERED that:

1. Kenergy's motion for deviation from customer notice required by 807 KAR 5:011, Section 8, is denied.
2. Kenergy's March 13, 2024 tariff filing in Case No. TFS2024-00108 is rejected for filing.
3. This matter is closed and shall be removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
APR 09 2024 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

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Appendix Item  
“C”



administrative regulation of the commission or provision of KRS Chapter 278.

Through use of the term “may,” there is no requirement that the Commission issue a declaratory order; therefore, no person has a right to obtain an Order. Critical to seeking an Order, there must be, among other things, a “person substantially affected” and a “state of facts” for review which can support a declaration.

807 KAR 5:001, Section 19(2) parts (b) through (d) require:

- (b) [The application] Contain a complete, accurate, and concise statement of the facts upon which the application is based;
- (c) Fully disclose the applicant's interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates

KYSEIA may reference other statutes, administrative regulations, Orders, or provisions of law as part of its arguments.

## **2. Arguments and Comments**

### **2.1 Kenergy’s Petition is not ripe and should be dismissed.**

Kenergy’s Petition, on its face and through its plain language, fails to present a matter that is ripe or otherwise proper for the adjudication sought by Kenergy. Specifically, Kenergy alleges that it has “received inquires about members who desire to install solar equipment on their property.”<sup>1</sup> Kenergy does not allege that it has received (or encouraged or even advised as necessary) any formal application for service for which it now seeks to *preemptively* deny service for the reasons alleged in the Petition.

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<sup>1</sup> Petition (filed Sept. 13, 2023), page 2.

Kenergy alleges that for two (2) inquiries, “the solar generating capacity is significant.”<sup>2</sup> Separate from failing to demonstrate that an application for service has been tendered (or is even expected) for either of the properties that are the subjects of the alleged inquiries, Kenergy simply alleges that, perhaps, these could be an issue. Specifically, Kenergy alleges: “In order to properly install such solar facilities as are described above [related to the two (2) alleged inquiries] in compliance with Tariff 46,<sup>3</sup> the pertinent distribution lines may require upgrades (emphasis added).”<sup>4</sup>

Kenergy does not fall within the scope of a “person substantially affected” in the absence of an actual application for service in combination with a demonstration that the pertinent distribution lines, in fact, require upgrades based upon the facts presented through the application(s). At best, Kenergy is a person *potentially* affected by a hypothetical application that may be filed and which, in turn, may require an upgrade.

Kenergy, through its Petition, fails to demonstrate itself as a “person substantially affected” and, further, fails to present a “state of facts” sufficient to support a request for the Commission to exercise its discretion in favor of adjudicating or declaring through 807 KAR 5:001, Section 19(1) abstract or hypothetical matters.<sup>5</sup> For this reason alone, it

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<sup>2</sup> Petition (filed Sept. 13, 2023), page 2.

<sup>3</sup> *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”).*

<sup>4</sup> Petition (filed Sept. 13, 2023), page 3.

<sup>5</sup> *See, for comparison*, 40 KAR 1:020, Section 4 (Official opinions [of the Attorney General] will be rendered ... only in response to questions relating to current factual situations; they will not be rendered in response to moot, hypothetical, or abstract questions...).

should be dismissed. Kenergy's Petition is akin to a strategic lawsuit against public participation ("SLAPP suit") through which Kenergy seeks to act adversely against its members (in the absence of the latter) who are alleged to have inquired about service that may result in a need to consider an aspect of Schedule 46 (a tariff provision which is not demonstrated as in an actual controversy).

**2.2 Kenergy's Petition demonstrates that it has not exhausted or otherwise completed its duties under Schedule 46.**

Kenergy's Petition fails to fully discuss applications for service under Tariff 46. Specifically, while Kenergy discusses Schedule Sheets 46B and 46C, Kenergy fails to identify or discuss Schedule 46D.<sup>6</sup> Kenergy, therefore, neglects to mention, among other things, the following tariff provision:

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.<sup>7</sup>

The immediately foregoing tariff provision, therefore, confirms that exceedance of the fifteen (15) percent metric identified by Kenergy in its Petition is not the end of the analysis nor does it suggest that service should be denied. The above language in Schedule 46D confirms that the fifteen (15) percent metric is a screening mechanism that does not conclusively determine safety or reliability. (The failure to disclose this material fact concerning its own tariffs, of itself, warrants dismissal.)

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<sup>6</sup> Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46D, effective Apr. 30, 2009.

<sup>7</sup> *Id.*

Setting aside for the moment that Kenergy does not possess the power to abuse its discretion or otherwise act arbitrarily or capriciously through Schedule 46D, Kenergy does not allege that it is in possession of all the relevant facts for a determination concerning whether the generating facility can be safely and reliably connected to Kenergy's system. Moreover, Kenergy does not allege that it has conducted this type of review based upon an application that has been reviewed under the process set forth and required by Kenergy's tariffs. Kenergy, based upon inquiries, alleges that upgrades *may* be needed. The allegation is not the product of the process required by Schedule 46.

A complete reading of Kenergy's tariff provisions (including Schedule 46D) for net metering demonstrates that the applicable framework for deciding interconnection is not whether there may be a problem but, instead, whether the generating facility can be safely and reliably connected to Kenergy's system. Kenergy's Petition does not include its required Schedule 46D review and analysis.

Also missing from the Petition is evidence of compliance with the following tariff provision:

If the Application is denied, Kenergy will supply the Customer with reasons for denial. The Customer may resubmit under Level 2 if appropriate.<sup>8</sup>

Separate from the fact that there is no application that has been reviewed, Kenergy fails to supply with its Petition any evidence that it has supplied the members seeking to interconnect with specific reasons why it seeks to deny the interconnections under the conditions as alleged by Kenergy. Again, the Petition is a preemptive move by Kenergy

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<sup>8</sup> *Id.*

that would allow Kenergy to simply ignore its tariffs so that it can obtain an adjudication against these members in their absence.

To properly exhaust procedures required by Kenergy's own tariff provisions, Kenergy should wait until it receives applications from its members and thereafter review the applications to determine (1) if upgrades are required and (2) whether the generating facility can be safely and reliably connected to Kenergy's system even if there is an exceedance of the fifteen (15) percent metric. If there is a basis for denying service, the basis should be documented and supplied to the customer.<sup>9</sup> Thus, Kenergy should be required to follow clear tariff provisions before it seeks an adjudication via a declaratory order of a matter that is alleged to have the potential ("may") to occur. In the absence of exhaustion of its own tariff provisions, Kenergy's Petition should be dismissed.

Additionally, the Petition fails to satisfy 807 KAR 5:001, Section 19(2)(b) in that it fails to contain a complete, accurate, and concise statement of facts because it omits Schedule 46D (which explains that the fifteen (15) percent metric is a screening device whose exceedance does not require denial of service). For this reason, the Petition should be dismissed.

### **2.3 Kenergy seeks a declaratory order for a matter that it can address through the filing of revised tariff pages.**

Part of Kenergy's proposed resolution is stated as follows:

[A] proposed solar generating facility that causes a 15% or greater increase in a line section's most recent annual one hour peak load is cause to deny the connection of the proposed solar facility to Kenergy's system.<sup>10</sup>

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<sup>9</sup> *Id.* ("If the Application is denied, Kenergy will supply the Customer with the reasons for denial. The Customer may resubmit under Level 2 if appropriate.")

<sup>10</sup> Petition (filed Sept. 13, 2023), pages 3 and 4.

To the extent that Kenergy seeks the declaration of a *per se* rule of denial, then Kenergy fails to mention that this proposed resolution conflicts with its Commission-approved tariffs (discussed above in **Section 2.2**). If the proposed connection fails the fifteen (15) percent screening metric, Kenergy reserves for itself the discretion to approve the connection of the proposed solar facility to the Kenergy system.<sup>11</sup> Kenergy, therefore, seeks a declaration concerning its Commission-approved tariffs when the proper procedural mechanism for addressing this matter is through filing revised tariffs.

To the extent that Kenergy does not seek the declaration of a *per se* rule of denial, then the matter is already addressed through Kenergy's existing tariffs (and requires no declaration). If Kenergy is unhappy with the plain language of its existing Commission-approved tariffs, then it should file revised tariffs.

Kenergy, therefore, is not seeking a declaration concerning a statute, administrative regulation, or Order of the Commission. Kenergy is seeking a revision of its existing tariff provisions. Revision of tariffs is comprehensively addressed in 807 KAR 5:011 and is the proper procedural avenue for Kenergy to advance its efforts.

**2.4 The matters raised by Kenergy through its Petition concern matters already pending before this Commission and are inappropriate for a new separate docket.**

Through an Order entered on September 24, 2020, the Commission opened an investigation into interconnection and net metering guidelines.<sup>12</sup> Kenergy is seeking to bypass that proceeding to obtain a preemptive adjudication against some of its members

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<sup>11</sup> Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46D, effective Apr. 30, 2009.

<sup>12</sup> Case No. 2020-00302, *Electronic Investigation of Interconnection and Net Metering Guideline*, Order (Ky. P.S.C. Sept. 24, 2020).



through the Petition in the instant case. Kenergy also takes antagonistic positions in the two (2) pending actions.

Kenergy, through Big Rivers Electric Corporation (“Big Rivers”), is participating in Case No. 2020-00302.<sup>13</sup> In comments filed on its behalf in Case No. 2020-00302, Kenergy states:

It is necessary for a utility to be able to require compliance with new standards, and to adopt rules and interconnection standards consistent with those standards, to keep up with innovations in the renewable energy field.<sup>14</sup>

KYSEIA agrees that it is important to keep up with innovations in the renewable energy field. KYSEIA disagrees with the premise that the Petition filed by Kenergy is a reasonable effort to consider those innovations. In fact, the Petition is calculated to divorce the innovations from request for a declaration. Completely absent from Kenergy’s Petition is any discussion of changes in consideration of the fifteen (15) percent metric since April 30, 2009, the effective date of Schedule 46B through D.

The 15% threshold is based on a rationale that unintentional islanding, voltage deviations, protection miscoordination, and other potentially negative impacts are negligible if the combined DG generation on a line section is always less than the minimum load.<sup>15</sup>

During review of PV interconnection requests in regions with a high level of PV deployment, the 15% interconnection screen often triggers the need for supplemental studies. In many cases, even when PV penetration is substantially above

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<sup>13</sup> Case No. 2020-00302, Joint Brief of Big Rivers Electric Corporation and its Members (filed Apr. 19, 2021).

<sup>14</sup> *Id.*, page 3.

<sup>15</sup> Michael Coddington, et al., *Updating Interconnection Screens for PV System Integration*, National Renewable Energy Laboratory, Technical Paper, NREL/TP-5500-54063 (Feb. 2012), page 2.

15%, the supplemental review does not identify any necessary system upgrades. There are many circuits across the United States and Europe with PV penetration levels well above 15% where system performance, safety, and reliability have not been materially affected.

These observations offer some indication that the existing 15% screen is conservative and is not an accurate method of determining the hosting capability (ability to add more PV without system upgrades) of a particular feeder. The following short-term, mid-term, and long-term approaches may be considered as possible steps to improve interconnection procedures for distribution-connected PV systems.<sup>16</sup>

Thus, in one docket, Kenergy urges consideration of innovations in the renewable energy field (which is clearly currently permissible for Kenergy through Schedule 46D) and in the instant docket Kenergy wants to rely upon select tariff provisions (other than Schedule 46D) with an effective date nearly fifteen (15) years old. These facts further underscore the problems with Kenergy seeking a declaration based upon hypothetical facts, a set of facts that does not contain an application, review, and determination under the entirety of Kenergy's existing tariff schedules. Kenergy is asking the Commission to engage in unfairly limited piece-meal rulemaking separate from the docket that is already considering these issues through an open and comprehensive review process.

If Kenergy is not seeking general rulemaking, then Kenergy is clearly seeking the adjudication of the rights of specific members to a set of facts presumed by Kenergy (facts not developed or proven). Kenergy is, then, seeking the resolution of a possible complaint without a complete set of facts or the participation of the complainant. Such a member-specific adjudication of rights upon a specific set of facts implicates Due Process, and the Petition by Kenergy fails to satisfy Due Process as to these members.

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<sup>16</sup> *Id.*, pages 5 and 6 (footnotes omitted).

As noted in the above argument, prior to seeking a declaration concerning a member's request to interconnect, consistent with Due Process, Kenergy should be required to demonstrate that it has formally reviewed and acted upon the matter through the process set forth in its own Commission-approved tariffs and has developed a complete and accurate set of facts. Here, the review, at best, is an undocumented process by Kenergy through which the utility declines to take formal action.<sup>17</sup>

Applications are reviewed and processed by Kenergy as either a Level 1 or Level 2 application.<sup>18</sup> The fifteen (15) percent metric identified by Kenergy in its Petition states the following:

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. recent annual one hour peak load.<sup>19</sup>

Schedule 46 also states: "No construction of facilities by Kenergy on its own system will be required to accommodate the generating facility."<sup>20</sup> Kenergy is properly charged with knowledge of its own tariff provisions, and Kenergy is (or should be) well-

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<sup>17</sup> Kenergy, through its own admissions, is clearly acting upon pre-applications reviewing applications for net metering service in a process that is not described or authorized by its tariffs.

<sup>18</sup> *Id.* Note: Kenergy fails to clearly disclose whether the inquiries concern possible applications for service and review under the Level 1 or the Level 2 process. The fifteen (15) percent metric identified by Kenergy in its Petition is applicable only to the Level 1 process. Kenergy has not taken formal action to state that a Level 2 process applies.

<sup>19</sup> Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46C, effective Apr. 30, 2009.

<sup>20</sup> Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46D, effective Apr. 30, 2009.

aware of the fact that its own tariff provisions already contain one of the resolutions proposed by the Petition, that upgrades required for the purpose of allowing net metering shall be borne by the customer-generator.<sup>21</sup>

Kenergy states that it served a copy of the Petition upon the Kentucky Attorney General. Kenergy does not state that it served a copy of the Petition upon any member who has applied for service, that it has served a copy of the Petition upon any member who has inquired about service, or that it has served a copy of the Petition upon either of the two (2) members who are alleged by Kenergy to have inquired about service and who are further alleged by Kenergy to seek service that would exceed the fifteen (15) percent metric which may require upgrades for the purpose of net metering. Kenergy is seeking to adjudicate the rights of members without demonstrating that it has made any attempt to allow the interests of those seeking to interconnect to be advanced.

Again, if Kenergy wants to engage in a debate concerning rulemaking, Case No. 2020-00302 is the proper forum. If Kenergy is unhappy with its own tariffs, 807 KAR 5:011 is the proper avenue for seeking relief. If Kenergy seeks a member-specific adjudication, then Kenergy is required by its Commission-approved tariffs and Due Process to follow its Commission-approved tariffs and take formal action and make formal and reviewable determinations. The pending Petition is not the proper forum for any of Kenergy's concerns, and the Petition should be dismissed.

**2.5 There are no grounds supporting a declaration concerning KRS 278.466(9)**

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<sup>21</sup> Petition (filed Sept. 13, 2023), pages 3 and 4.

Through its Corrections to Petition,<sup>22</sup> Kenergy “specifically” identifies KRS 278.466(9).<sup>23</sup> The statutory provision states:

Any upgrade of the interconnection between the retail electric supplier and the customer-generator that is required by commission-approved tariffs for the purpose of allowing net metering shall be made at the expense of the customer-generator.

Kenergy does not suggest any ambiguity in KRS 278.466(9). The plain language of the statute speaks for itself and does not require further declaration by this Commission.<sup>24</sup> The declaration has already conclusively been provided by The General Assembly, and Kenergy does not allege otherwise.

Second, the Petition (even as corrected) does not allege that the pertinent distribution lines require upgrades; instead, it states that they “may” require upgrades.<sup>25</sup> Thus, there is no demonstration by Kenergy that there is a need for an upgrade, and KRS 278.466(9) has not been demonstrated as in controversy. Aside from the lack of any ambiguity, there is no need for a declaration concerning KRS 278.466(9) because the statute has not been demonstrated as applicable to this set of facts.

Third, KRS 278.466(9) does not set forth the fifteen (15) percent screening metric. (Additionally, the screening metric is not set forth through the Commission’s administrative regulations.) The fifteen (15) percent screening metric is contained in Kenergy’s

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<sup>22</sup> Corrections to Petition (filed Nov. 2, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> The Commission cannot declare an unambiguous statute to mean anything other than its plain language.

<sup>25</sup> Petition (filed Sept. 13, 2023), page 3.

Commission-approved tariffs. The significance of this fact is that there is no direct relationship between the screening metric and the statute. The lack of direct connection between the screening metric and the statute is confirmed by the portion of Kenergy's Commission-approved tariff through which Kenergy obtained the discretion to approve a connection if Kenergy determines that the generating facility can be safely and reliably connected.<sup>26</sup> Before Kenergy considers the cost-assignment of any upgrades, Kenergy should determine whether there are any required upgrades.

If Kenergy determines that upgrades are required and that the upgrades are for the purpose of allowing net metering, then KRS 278.466(9) speaks for itself and requires no declaration. What Kenergy is trying to do is obtain a declaration concerning the assignment of cost without making the foundational determination of whether the statute is even applicable. KRS 278.466(9) does not require a declaration.

**3. KYSEIA requests, in the alternative, a rehearing of the Order denying KYSEIA's Motion to Intervene.**

Through an Order entered on October 30, 2023, the Commission denied KYSEIA's Motion to Intervene.<sup>27</sup> In the event (alternative) that the Commission does not dismiss Kenergy's Petition (for any or all of the above-stated or any other reason(s)), KYSEIA respectfully requests that the Commission rehear its October 30, 2023 Order denying KYSEIA's intervention. Kenergy's Petition fails to offer a complete set of facts and law necessary for an adjudication through a declaratory Order, and KYSEIA and its members have an interest in the adjudication that Kenergy seeks.

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<sup>26</sup> Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46D, effective Apr. 30, 2009.

<sup>27</sup> Order (Ky. P.S.C. Oct. 30, 2023).

KRS 278.400 authorizes applications for rehearing, and this request is timely-filed. KYSEIA respectfully submits that a motion to intervene is a procedural matter (the right to participate) distinct from the substantive merits of the underlying proceeding for which intervention is sought. To this end, KYSEIA recited its interest in participating in the matter through its motion and did not address the substantive merits of the Petition. Thus, KYSEIA's motion to intervene was not an offer of evidence upon the Petition itself because at the time of the motion KYSEIA was not a party to the action and not yet authorized to submit evidence into the record. KYSEIA's Response tendered through this pleading is authorized by the Commission's October 30, 2023 Order and does not implicate the additional evidence provision of KRS 278.400.

#### **4. Summary and Conclusion**

Kenergy wants to beat its net metering members to the punch and resolve a complaint case in the absence of the formal actions required by Kenergy's Commission-approved tariff provisions and without the participation of any complainants. Kenergy's Petition is flawed and should be dismissed for the above-stated reasons. The conditions for the issuance of a declaratory order through 807 KAR 5:001, Section 19 have not been demonstrated as satisfied; furthermore, there are other clear and appropriate avenues for Kenergy to advance its interests regarding interconnection for net metering service.

WHEREFORE, KYSEIA respectfully submits this Response and asks that Kenergy's Petition be dismissed without prejudice, and in the alternative, grant KYSEIA's request for Rehearing of the Order denying KYSEIA intervention.

Respectfully submitted,

/s/ David E. Spenard

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#### **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 13<sup>th</sup> day of November, 2023, in conformity with the Commission's April 14, 2023 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



Appendix Item  
“D”

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PETITION OF KENERGY CORP.	)	CASE NO.
FOR A DECLARATORY ORDER	)	2023-00309

ORDER

On September 13, 2023, Kenergy Corp. (Kenergy) filed a petition for declaratory order requesting an interpretation of a section of its Schedule 46 (Net Metering) of its Tariff. On September 14, 2023, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) filed a motion to intervene. The Commission granted the motion on October 3, 2023. On November 13, 2023, Attorney General filed a response to Kenergy's petition.

On October 13, 2023, the Kentucky Solar Energy Industry Association (KYSEIA) filed a motion to intervene. The Commission denied the motion on October 20, 2023, and stated that KYSEIA could file, as a non-party, a response to Kenergy's petition. On November 20, 2023, KYSEIA filed a response to the petition and, in the alternative, a motion for rehearing. On November 20, 2023, Kenergy filed a response to the motion for rehearing. The Commission denied the motion for rehearing on December 1, 2023. Neither Commission Staff nor Attorney General filed requests for information nor requested a hearing, and this matter stands ready for decision on the record.

BACKGROUND

Kenergy is a jurisdictional utility that provides retail electric service in Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean,

Muhlenberg, Ohio, Union, and Webster counties, Kentucky. Kenergy offers net metering service to its members pursuant to Schedule 46 of its tariff, which sets forth the terms under which members may interconnect a solar facility to Kenergy's distribution system.

Kenergy in its petition requested the Commission to issue a declaratory order on two issues. First, Kenergy requested the Commission to issue an order interpreting the first condition for approval of a Level 1 Interconnection to a radial distribution circuit under Kenergy's Net Metering Tariff:

(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 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.<sup>1</sup>

Kenergy stated in its petition that a radial circuit is the set of distribution lines that run from a substation to customers in the same manner that spokes in a wheel run from the wheel hub. Each line has sections that are separated by devices designed to trip in the event of an overload or short and thereby to isolate the outage.

Kenergy stated that it has recently received two inquiries from members that want to install solar generating facilities on their properties and to interconnect these facilities with Kenergy's distribution circuit. One customer's proposed facility would have total generating capacity of 320 kW and the other a total load of 135 kW. Kenergy stated that the smallest part of the primary distribution system 320 kW solar generating facility could remain connected to after operation of a sectionalizing device has an annual peak load of 95 kW, and the smallest part of the primary distribution system the 135 kW solar

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<sup>1</sup> Kenergy Tariff, Schedule 46 – Net Metering, Sheets 46B and 46A.

generating facility could remain connected to after operation of a sectionalizing device has a peak load of 115 kW. Kenergy stated that it interprets its Net Metering Tariff to allow it to deny an application to interconnect a solar generating facility if the facility would cause a 15 percent or greater increase in a line section's most recent annual one-hour peak load.

Kenergy submitted with its petition a map that it asserted shows an actual circuit with a proposed installation and also with a hypothetical installation.<sup>2</sup> Kenergy stated that the map was provided to better frame the issue.

Kenergy further requested the Commission to issue a declaratory order that any upgrades to Kenergy's system necessary to allow the interconnection of a member solar generating facility must be borne by the member desiring to install the facility and should not be borne among the membership of Kenergy as a whole. Kenergy asserted that distribution lines at issue were constructed in anticipation of typical modest rural residential and agricultural loads, and that proposed solar generating facilities were not anticipated at the time the lines were constructed. Kenergy contended that connecting the proposed generating facilities to its system would require upgrades of the lines, the cost of which could be substantial. Kenergy asserted that costs of the upgrades should be borne by the solar generating members and not by other members on the system.

The Attorney General stated in its response to Kenergy's petition that the Commission should grant Kenergy's declaratory order and find that the cost of any distribution upgrades required to serve these solar generating facilities should be borne by the member or members driving those costs; and that those costs should not be

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<sup>2</sup> Petition (filed Sept. 14, 2023), Exhibit B.

allocated to the utility's other customers. The Attorney General did not take a position on the interpretation of Kenergy's Net Metering Tariff.

KYSEIA argued that Kenergy's petition fails to present a matter that is ripe or otherwise proper for adjudication and should be dismissed. KYSEIA claimed that the petition is not ripe because the petition does not concern application of the tariff language to an actual, pending application for interconnection but rather seeks an order on the basis of a hypothetical question.

KYSEIA argued that no order is warranted on the issue of responsibility for the cost of upgrades necessary for an interconnection because Kenergy's tariff is clear that such costs must be borne by the customer-generator. KYSEIA argued that no declaratory order is warranted on KRS 278.466(9), which likewise provides that interconnection costs must be borne by the customer generator, because the statute is unambiguous.

#### LEGAL STANDARD

Kenergy filed its petition pursuant to Section 19 of 807 KAR 5:001:

(1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

The issuance of a declaratory order is permissive and at the discretion of the Commission.<sup>3</sup>

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<sup>3</sup> Case No.2021-00370, *Electronic Investigation of the Rates, Services and Facilities of East Kentucky Power Company* (Ky. PSC Oct.8, 2021) at 5.

KRS 278.466 sets forth the obligation of each retail electric supplier to make net metering service available to eligible customer generators. KRS 278.465(1) defines “eligible customer generator” as “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.”

## DISCUSSION AND FINDINGS

### Ripeness

The Commission will first address KYSEIA's argument that Kenergy's application fails to present a matter that is ripe or otherwise proper for adjudication. KYSEIA claimed that the petition is not ripe because the petition does not present an actual controversy but rather seeks an advisory opinion on the basis of a hypothetical question.

The Commission has declined to issue advisory opinions in the past. In Case No. 2013-00413,<sup>4</sup> the Commission found that it was unable to render what it said would amount to an advisory opinion regarding the scope of its jurisdiction under an electric service contract because there was no actual contractual dispute at the time.

More recently, in Case No. 2020-00095, the Commission considered an application by Kenergy for a declaratory order that its proposed method of allocating a potential rate change by Big Rivers Electric Corporation (BREC) was consistent with the requirements of KRS 278.455.<sup>5</sup> Intervenors in the case argued for a different interpretation of the statute. Intervenors also argued that because BREC was not seeking

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<sup>4</sup> Case No. 2013-00413, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC Jan. 30, 2014), Order at 19

<sup>5</sup> Case No. 2020-00095, *Electronic Application of Kenergy Corp. For a Declaratory Order* (Ky. PSC March 11, 2021), Order.

a change in rates, there was no present actual controversy, and that the Commission should decline to issue an advisory opinion. In determining to consider the merits of the application, the Commission noted that unlike the Kentucky Declaratory Judgment Act, 807 KAR 5:001, Section 19, does not require an “actual controversy” in order for the Commission to issue a declaratory order. Rather, it states, in relevant part, that the Commission may issue a declaratory order with respect to the meaning and scope of a provision of KRS Chapter 278 “upon application by a person substantially affected.”

In this case, the Commission elects to consider the merits of Kenergy’s application. Although KYSEIA does not advance a contrary interpretation of Kenergy’s net metering tariff, issuing a declaratory order on the tariff provision at issue will provide certainty to Kenergy and potential applicants for interconnection, and thus, promote the economic use of resources.

### Line Section

The term “line section” is defined in the first condition under Kenergy’s Net Metering Tariff for a Level 1 Interconnection:

(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 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.**<sup>6</sup>

The 15 percent threshold was adopted by the Commission in Case No. 2008-00169, in which the Commission established interconnection and net metering guidelines and

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<sup>6</sup> Kenergy Tariff, Schedule 46 – Net Metering, Sheets 46B and 46A (emphasis added).

uniform net metering tariff language for all retail electric utilities in Kentucky.<sup>7</sup> In initiating the proceeding, the Commission found that that the Model Interconnection Procedures and Agreement for Small Distributed Generation Resources (Oct. 2003) developed by the National Association of Regulatory Utility Commissioners should be used in conjunction with the utilities' existing tariffs as the starting point for developing Kentucky-specific guidelines.<sup>8</sup>

The 15 percent capacity penetration threshold is one of the screening tools developed to expedite interconnection of small, low-impact generators without the need for additional technical studies. The 15 percent threshold is intended to mitigate possible unsafe conditions that can be caused when distributed generation continues to feed excess power back into the grid after the utility source of power is de-energized, which can result in an unintentional "island," a condition can pose a risk to utility equipment, personnel, and to appliances.<sup>9</sup>

Based on the purpose of the 15 percent capacity penetration threshold, the Commission finds the term "sectionalizing device" as used in Kenergy's net metering tariff is any safety device that can isolate distributed solar generation from the rest of Kenergy's distribution grid. The Commission further find that the term "line section" is the portion of Kenergy's distribution system connected to a customer-generator bounded by the first

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<sup>7</sup> Case No. 2008-00169, *Interconnection and Net Metering Guidelines for Retail Electric Suppliers and Qualifying Customer-owned Generators* (Ky. PSC Jan. 8, 2009).

<sup>8</sup> Case No. 2008-00169, Jan. 8, 2009 Order at 3.

<sup>9</sup> National Renewable Energy Laboratory, *Updating Interconnection Screens for PV System Integration* (Feb. 2012) at 2-5, <https://www.nrel.gov/docs/fy12osti/54063.pdf>.



sectionalizing device upstream from the customer's proposed facility and the end of the radial distribution line.

Interconnection upgrades

The Commission finds that the cost of any upgrades to Kenergy's system necessary to allow the connection of a proposed solar generating facility must be borne by customer-generator. Both KRS 278.466(9) and Kenergy's net metering tariff clearly and unambiguously provide that any upgrade of the interconnection between Kenergy and the customer-generator required for net metering must be made at the expense of the customer-generator.

IT IS THEREFORE ORDERED that:

1. Kenergy's request for a declaratory order interpreting the first condition under Kenergy's Net Metering Tariff for a Level 1 Interconnection is granted.
2. The term "line section" in the first condition under Kenergy's Net Metering Tariff for a Level 1 Interconnection means the portion of Kenergy's distribution system connected to a customer-generator bounded by the first sectionalizing device upstream from the customer's proposed facility and the end of the radial distribution line.
3. Kenergy's request for a declaratory order that the cost of any upgrades to its system necessary to allow the connection of a proposed solar generating facility must be borne by customer-generator is granted.
4. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Vice Chairman

\_\_\_\_\_  
Commissioner



ATTEST:

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\_\_\_\_\_  
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Appendix Item  
“E”



David Spenard &lt;dspenard@strobobarkley.com&gt;

## Fwd: Rural Energy for America Program - Semi-Annual Reporting Due

1 message

Roger Shocklee [REDACTED]

Tue, Aug 6, 2024 at 8:33 PM

To: David Spenard &lt;dspenard@strobobarkley.com&gt;

Here is the email I received. Thanks!

----- Forwarded message -----

From: Miller, Isabella - RD, KY [REDACTED]

Date: Tue, Aug 6, 2024, 9:38 AM

Subject: Rural Energy for America Program - Semi-Annual Reporting Due

To: Roger Shocklee [REDACTED]

Cc: Jason Delambe [REDACTED]

Good morning Roger:

One of the requirements tied to the REAP grant that was awarded to you on 07/14/2023 for the purchase and installation of a 102.6 kW Ground-Mounted PV Array is the submission of a Project Performance Report and Federal Financial Report. Both reports are required to be completed and submitted to the State Office on a semi-annual basis during the construction phase of the project. The June 30, 2024 reports are currently due. Also, we never received your previous reports – it is required that you submit the current reports in order to keep your grant active. Attached you will find the reports for your completion. Please return the reports by August 20, 2024.

Please note that you have until 07/13/2025 to complete the project and request / receive your awarded grant funds. Any funds that are not disbursed by the project completion date will be de-obligated and will not be available for reimbursement. If there are any potential delays or if you are not planning on completing the project by the completion deadline, please notify the State Office in writing as soon as possible.

I also checked in our system, and your SAM.gov registration is inactive. It expired on March 19, 2024. This will need to be renewed before you can receive any reimbursement. It can take some time for the renewal process unfortunately, so it would probably be best to get that process started sooner rather than later.

Once again, **please return the completed documents to my attention by August 20, 2024. Please also let me know if you are done with your project so we can get started on the reimbursement process.** The completed documents can be submitted electronically to Isabella.Miller [REDACTED] or by mail to USDA-RD, Attn: RBCS, 771 Corporate Drive, Suite 200, Lexington KY 40503-5477.

If you have any questions, please feel free to contact me at [REDACTED]

### Instructions for filling out the SF 425 Federal Financial Report:

#### Federal Cash

Line 10a – Cash Receipts – Federal Funds Received from USDA for Grant – \$0

Line 10b – Cash Disbursements – Federal Funds Paid Out by Buck Creek Farm, LLC – should be grant amount (\$87,900.00) if you have paid in full for the PV Array already. If you haven't paid anything yet, it should be \$0. If you have paid for part of the PV Array, it should be however much you have paid for the PV Array multiplied by 0.4

Line 10c – Cash on Hand (Line A Minus B) - \$\$ USDA Owes to Buck Creek Farm, LLC (either a negative number in this box or \$0)

#### Federal Expenditures and Unobligated Balance

Line 10d – Total Federal Funds Authorized – Total Award – grant amount (\$87,900.00)

Line 10e – Federal Share of Expenditures – Federal Funds Paid Out (Same as Line 10b Above)

Line 10f – Federal Share of Unliquidated Obligations – Federal Funds Obligated by Recipient but Not Paid Yet. Should be \$0 if you have paid in full / paid for whatever you have ordered for the PV Array already, and also should be \$0 if you have not signed any contracts / placed any orders for the PV Array yet. If you have signed any contracts / placed any orders but not paid for them yet, it should be for

however much the unpaid contracts / orders were for, multiplied by 0.4 (e.g. if you have ordered everything already but not paid for any of it, this box would be the grant amount)

Line 10g – Total Federal Share (Sum of Lines E and F) – Funds Paid Out and Funds Committed to Project

Line 10h – Unobligated Balance of Federal Funds (Line D Minus G) – Unspent Balance Remaining for Award

Recipient Share

Line 10i – Total Recipient Share Required – matching funds amount (\$131,850.00)

Line 10j – Recipient Share of Expenditures – if you have paid in full for the PV Array, this should be the full matching funds amount, or higher if there were any cost overruns. If you haven't paid for anything yet, it should be \$0. If you have paid for part of the PV Array, it should be however much you have paid for the PV Array multiplied by 0.6

Line 10k – Remaining Recipient Share to be Provided - \$131,850.00 minus recipient share of expenditures

Program Income – N/A for this Grant

Indirect Expense – N/A for this Grant

Note – federal grant funds cannot exceed the amount that were approved on 07/14/2023, even in the case of cost overruns.

Best,

Izzy

**Isabella Miller**

Loan Assistant

Rural Business-Cooperative Service | Rural Development

United States Department of Agriculture

250 Sportsman Lake Road, Suite 100

Elizabethtown, Kentucky 42701

Work Cell: [REDACTED]

<https://www.rd.usda.gov/about-rd/agencies/rural-business-cooperative-service>

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**2 attachments**

 **Semi-Annual PPR Buck Creek Farm.pdf**  
150K

 **SF 425 Buck Creek Farm.pdf**  
148K

# Semi-Annual Project Performance Report

Date: \_\_\_\_\_

The **Project Performance Report** is a "fillable" form and certain areas of the form will expand as information is typed in. You will see a field marker (grey box) just click on these to replace with your text. If you don't need to type something in a particular field just leave it alone; the field marker will not print.

This report is required to be submitted on a **semi-annual basis** (within 30 days after June 30 and December 30) – along with **SF 425** "Federal Financial Report". A **final** Project Performance Report will be required with the **last SF 425**.

Your Project is one of the following:	
	RBEG – Rural Business Enterprise Grant
	RBOG – Rural Business Opportunity Grant (2 years to complete project)
<input checked="" type="checkbox"/>	<b>Renewable Energy System</b> – Section 9007 – REAP
	Energy Efficiency Improvements – Section 9007 - REAP

Please Choose one of the following:	
<input checked="" type="checkbox"/>	This is an <b>semi-annual</b> report for the period ending: <u>06/30/2024</u>
	This is a <b>final</b> project performance report. (For Energy Grants see last page for additional reporting requirements)

If this is a <b>final</b> report for <b>RBOG</b> indicate:	
	Number of final Jobs created as a result of the grant.
	Number of final Jobs saved as a result of the grant.

<b>Borrower/Grantee Name:</b>	Buck Creek Farm, LLC
<b>Contact Person's Name:</b>	Roger Shocklee
<b>Address:</b>	750 Barrett Hill Road, Livermore, KY 42352
<b>Phone Number:</b>	[REDACTED]
<b>E-Mail Address of Contact Person:</b>	[REDACTED]

Describe your Project:
102.6 kW Ground-Mounted PV Array

The Goal Date for completion of the Project is:





**Timetables and Objectives established for the next reporting period:**

07/01/2024 to 12/31/2024

Timetable	Objective

**Any other comments you would like to make:**

**Final Report for Renewable Energy Systems & Energy Efficiency Improvements Grants:** please include an attachment addressing the following items:

- Detailed Project Funding and Expense Summary
- Summary of Facility installation/construction process, including recommendations for development of similar projects by future applicants to the program

# Federal Financial Report

(Follow form instructions)

OMB Number: 4040-0014  
Expiration Date: 02/28/2025

1. Federal Agency and Organizational Element to Which Report is Submitted <div style="border: 1px solid black; padding: 5px; height: 30px;">USDA Rural Development</div>		2. Federal Grant or Other Identifying Number Assigned by Federal Agency (To report multiple grants, use FFR Attachment) <div style="border: 1px solid black; padding: 5px; height: 20px; background-color: black;"></div>	
3. Recipient Organization (Name and complete address including Zip code) Recipient Organization Name: <div style="border: 1px solid black; padding: 2px;">Buck Creek Farm, LLC</div> Street1: <div style="border: 1px solid black; padding: 2px;">750 Barrett Hill Road</div> Street2: <div style="border: 1px solid black; padding: 2px; height: 20px;"></div> City: <div style="border: 1px solid black; padding: 2px;">Livermore</div> County: <div style="border: 1px solid black; padding: 2px;">McLean</div> State: <div style="border: 1px solid black; padding: 2px;">Kentucky</div> Province: <div style="border: 1px solid black; padding: 2px; height: 20px;"></div> Country: <div style="border: 1px solid black; padding: 2px;">USA: UNITED STATES</div> ZIP / Postal Code: <div style="border: 1px solid black; padding: 2px;">42352</div>			
4a. UEI <div style="border: 1px solid black; padding: 2px; height: 20px; background-color: black;"></div>	4b. EIN <div style="border: 1px solid black; padding: 2px; height: 20px; background-color: black;"></div>	5. Recipient Account Number or Identifying Number (To report multiple grants, use FFR Attachment) <div style="border: 1px solid black; padding: 2px; height: 20px;"></div>	
6. Report Type <input type="checkbox"/> Quarterly <input checked="" type="checkbox"/> Semi-Annual <input type="checkbox"/> Annual <input type="checkbox"/> Final	7. Basis of Accounting <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Accrual	8. Project/Grant Period From: <div style="border: 1px solid black; padding: 2px;">04/30/2023</div> To: <div style="border: 1px solid black; padding: 2px;">07/13/2025</div>	9. Reporting Period End Date <div style="border: 1px solid black; padding: 2px;">06/30/2024</div>
10. Transactions <i>(Use lines a-c for single or multiple grant reporting)</i> <b>Federal Cash (To report multiple grants, also use FFR attachment):</b>			Cumulative
a. Cash Receipts			<div style="border: 1px solid black; padding: 2px;">0</div>
b. Cash Disbursements			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
c. Cash on Hand (line a minus b)			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
<i>(Use lines d-o for single grant reporting)</i>			
<b>Federal Expenditures and Unobligated Balance:</b>			
d. Total Federal funds authorized			<div style="border: 1px solid black; padding: 2px;">87,900.00</div>
e. Federal share of expenditures			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
f. Federal share of unliquidated obligations			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
g. Total Federal share (sum of lines e and f)			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
h. Unobligated balance of Federal Funds (line d minus g)			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
<b>Recipient Share:</b>			
i. Total recipient share required			<div style="border: 1px solid black; padding: 2px;">131,850.00</div>
j. Recipient share of expenditures			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
k. Remaining recipient share to be provided (line i minus j)			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
<b>Program Income:</b>			
l. Total Federal program income earned			<div style="border: 1px solid black; padding: 2px;">N/A</div>
m. Program Income expended in accordance with the deduction alternative			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
n. Program Income expended in accordance with the addition alternative			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>
o. Unexpended program income (line l minus line m and line n)			<div style="border: 1px solid black; padding: 2px; height: 20px;"></div>

11. Indirect Expense						
a. Type	b. Rate	c. Period From	Period To	d. Base	e. Amount Charged	f. Federal Share
N/A						
g. Totals:						
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:						
<input type="text"/> <input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/>						
<b>13. Certification: By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).</b>						
a. Name and Title of Authorized Certifying Official						
Prefix:	<input type="text"/>	First Name:	<input type="text" value="Roger"/>	Middle Name:	<input type="text"/>	
Last Name:	<input type="text" value="Shocklee"/>			Suffix:	<input type="text"/>	
Title:	<input type="text" value="Owner"/>					
b. Signature of Authorized Certifying Official				c. Telephone (Area code, number and extension)		
<input type="text"/>				<input type="text" value="██████████"/>		
d. Email Address				e. Date Report Submitted		14. Agency use only:
<input type="text" value="██████████"/>				<input type="text"/>		