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PUBLIC SERVICE
COMMISSION

September 26, 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 Kenergy Corp's Response to his 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.

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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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 KENERGY
CORP.’S RESPONSE TO COMPLAINANT’S RENEWED
MOTION FOR DISPOSITION IN FAVOR OF
COMPLAINANT BASED UPON THE EXISTING RECORD**

Comes now Roger D. Shocklee, Complainant, by and through counsel, and pursuant to 807 KAR 5:001 Section 5(3) replies to Kenergy Corp’s Response to his Renewed Motion for Disposition In Favor of Complainant Based Upon the Existing Record.

The issues in the instant case pertain to Kenergy Corp.’s (“Kenergy”) failure to adhere to the Filed Rate Doctrine and comply with its own tariffs by rejecting Complainant’s applications for interconnection. Kenergy’s failure is based upon a flawed reading of KRS Chapter 278 and application of a real property ownership requirement that does not exist. Both applications should have been accepted and processed, and the Response does not demonstrate otherwise.

The Response, instead, opts to provide the unsworn testimony of Counsel as to how Kenergy might have responded to Complainant’s applications for interconnection if they had been accepted for review. There are three (3) flaws in Kenergy’s approach.

1. Kenergy Conflates Acceptance or Rejection of an Application for Interconnection with Review for Approval or Denial of an Application for Interconnection.

Kenergy conflates its responsibilities under its Commission-approved tariffs concerning the acceptance or rejection of an application for interconnection with its responsibilities concerning the review of an application. They are not interchangeable, and nothing in the Commission’s August 6, 2024 Order in Case No. 2023-00309 supports an inference that they are one and the same.

Kenergy’s Response does not fully describe the Commission’s Order in Case No. 2023-00309. Kenergy omits any mention of the following finding from that Order.

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 (emphasis added).¹

Through Kenergy’s Commission-approved tariffs, if an application satisfies all screening metrics necessary for an expedited approval, Kenergy, pursuant to its net metering tariff, approves the application.² By reference to the plain language of Kenergy’s

¹ *Electronic Petition of Kenergy Corp. For a Declaratory Order*, (Ky. P.S.C. Aug. 6, 2024) at page 7.

² *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”). Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46B through 46D, effective Jan. 8, 2009.

Commission-approved tariffs, the failure to satisfy all screening metrics necessary for an expedited approval does not require the denial of an application for interconnection. Instead, a failure to satisfy all screening metrics requires Kenergy to exercise its discretion and make a decision (otherwise non-expedited) upon the application.³

In no event does the failure to satisfy all screening metrics for an expedited interconnection justify or render harmless the rejection of Complainant's applications. The Order in Case No. 2023-00309 does not excuse Kenergy's rejection of Complainant's applications for interconnection nor does it require the denial of the applications for interconnection. The Order in Case No. 2023-00309, rather than addressing rejection or acceptance of an application for interconnection, addresses the limited issue of how to determine a "line section" which is pertinent to determining whether an application for interconnection satisfies all screening metrics for an **expedited** interconnection but is not determinative of whether an application should be denied.

2. Kenergy Cannot Provide through the Unsworn Conclusory Statements of Its Counsel in Its Response a Reason for Rejecting the Application that It Did Not Rely Upon.

Kenergy rejected the applications; therefore, Kenergy did not exercise its discretion in reviewing the applications. Per Kenergy's tariffs: "If the Application is denied, Kenergy will supply the Customer with reasons for denial."⁴ Because Kenergy rejected

³ Pursuant to Schedule 46, P.S.C. Ky. No. 2, First Revised Sheet No. 46D: "If the generating facility does not meet all of the above listed criteria [including the fifteen (15) percent metric], 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."

⁴ Schedule 46 P.S.C. Ky. No. 2 First Revised Sheet No. 46D.

the applications, it did not supply Complainant with reasons for denial of the requests for interconnection or the conditions required for an interconnection. The Order in Case No. 2023-00309 did not relieve Kenergy of any responsibilities under its Commission-approved tariffs for supplying Complainant with such information.

Kenergy's error in rejecting the applications, therefore, has significant consequences because Kenergy avoided its duty of review and documentation. It cannot assert as a defense a review required under its tariffs that it did not conduct in accordance with the terms and conditions of its tariffs.

Each of Complainant's applications is a Level 1 application. Kenergy's Commission-approved tariff states: "No application fees, or other review, study, or inspection or witness test fees are charged for Level 1 Applications."⁵ In rejecting the applications, Kenergy avoided its duty to review or study the applications for interconnection and supply Complainant with the documentation of a decision.

From the Commission's Order in Case No. 2023-00309:

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.⁶

If, as Kenergy alleges through the unsworn testimony of its Counsel, there were technical reasons bearing upon Kenergy's consideration of Complainant's Level 1

⁵ Schedule 46 P.S.C. Ky. No. 2 First Revised Sheet No. 46F.

⁶ Case No. 2023-00309, Order (Ky. P.S.C. Aug. 6, 2024) at page 8.

applications for approval or denial of the interconnection, Kenergy was required (per the plain language of its tariffs), to supply Complainant with those results (and, at minimum, document and explain the upgrades stated to be necessary).

The foregoing is Kenergy's responsibility for a Level 1 application review under its Commission-approved tariffs, and it cannot be satisfied by its Counsel's unsworn testimony (which does not state and describe the upgrade(s) of the interconnection alleged as necessary). Having rejected the applications, Kenergy cannot assert a reason for denial that it did not provide and cannot now satisfy its duty to review and process the application through Counsel's conclusions. The Commission's Order in Case No. 2023-00309 does not suggest otherwise.

3. The Unsworn Testimony of Kenergy's Counsel is Not Evidence.

Contrary to the Response, the Commission's Order in Case No. 2023-00309 does not resolve the issue of the acceptance or rejection of Complainant's applications because the August 6, 2024 Order in that proceeding is only relevant to the review process for the approval or denial of an application. Moreover, the review process required under Kenergy's Commission-approved tariffs has not been conducted.

Kenergy's Response relies upon the unsworn testimony of its Counsel as evidence of Kenergy's operations and the dynamics of its primary distribution system as they apply to a specific customer's applications. Kenergy's evidence of record in the instant case regarding the line sections in its system as they pertain to Complainant is through its Vice President of Engineering,⁷ and Counsel cannot testify on his behalf as an expert witness.

⁷ Kenergy Corp.'s Verified Response to Commission Staff's First Requests for Information Entered March 8, 2024 (filed Mar. 14, 2024).

Included in the Staff requests to Kenergy, among other things, are the following instructions.

Each response shall include the question to which the response is made and shall include the name of the witness responsible for responding to the questions related to the information provided. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

...

Kenergy shall make timely amendment to any prior response if Kenergy obtains information that indicates the response was incorrect or incomplete when made or, though correct or complete when made, is now incorrect or incomplete in any material respect.⁸

Kenergy's Counsel's unsworn conclusory statements regarding the impact of the Order in Case No. 2023-00309 upon the technical aspects of Kenergy's primary distribution system do not satisfy the requirements of Staff's March 8, 2024 request because they are not responses under oath and they are not through the qualified expert supplying the initial response. Kenergy may not amend its prior Verified Responses through Counsel's argument. Kenergy does not (and cannot) supply Complainant with reasons for denial of the requests for interconnection or the conditions required for an interconnection through Kenergy Counsel's unsworn pleading. It must supply the information through formal action upon the applications in accordance with its tariffs.

⁸ Commission Staff's First Request for Information to Kenergy Corp. (Mar. 8, 2024) at pages 1 and 2.

WHEREFORE, Complainant respectfully submits this Reply.

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 electronic mail message to the Commission's Executive Director, September 26, 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 copy of the pleading was transmitted by electronic mail message to attorneys Allyson Honaker and Brittany Koenig, Counsel for Kenergy.

/s/ David E. Spenard
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