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PUBLIC SERVICE
COMMISSION

December 30, 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 Complainant's Application for Rehearing. 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. An electronic version of the paper has been served to Counsel for Kenergy as per the certificate in the pleading.

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

Respectfully submitted,

/s/ 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 |) | |

**REPLY TO KENERGY CORP.'S RESPONSE
TO COMPLAINANT'S APPLICATION FOR REHEARING**

Comes now Roger D. Shocklee, Complainant, ("Mr. Shocklee" or "Complainant") by and through counsel, and pursuant to 807 KAR 5:001, Section 5(3) tenders his Reply to Kenergy's Corp.'s Response to Complainant's Application for Rehearing ("Kenergy" and "Response"). Mr. Shocklee states: Kenergy's Response demonstrates why the Commission should rehear the matter and decide the property ownership issue.

- 1. Kenergy's Response confirms that it will not accept any applications for interconnection tendered by Mr. Shocklee unless he is the owner of the property where the proposed solar facility is to be installed.**

On page 2 of the Response, Kenergy describes the Public Service Commission's ("Commission" or "PSC") process of accepting or rejecting standard filings with the PSC as instructive. Per Kenergy:

If the application [filed at the Commission] does not meet these [standard filing] requirements, the application is found

deficient (rejected) and it is not reviewed on the merits until the deficiencies (reasons for the rejection) are cured.¹

Kenergy further states:

Mr. Shocklee has not cured the deficiencies in his net-metering interconnection applications, therefore, Kenergy does not have any pending applications for review from Mr. Shocklee.²

Kenergy identified a single reason why it rejected Mr. Shocklee's applications.

Through a letter from Kenergy dated November 30, 2023:

I am in receipt of your November 27, 2023, letter addressed to our counsel. 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.

Per page 3 of Kenergy's Response, Kenergy confirms its position that Mr. Shocklee must cure the ownership issue before it will accept his applications for interconnection. Therefore, property ownership is the only reason for rejection identified in the letter and remains the only reason identified by Kenergy for rejection of Mr. Shocklee's applications. At the time of his applications, proof of property ownership was not a requirement in Kenergy's Commission-approved tariffs. As Mr. Shocklee pointed out in an earlier stage of this litigation, prior to the December 4, 2024 Order:

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 form of a deed or tax bill."

¹ Response, page 2.

² Response, page 2.

Kenergy's tariff filing in Case No. TFS2024-99108 was rejected for filing.³

Mr. Shocklee, through his Application for Rehearing, demonstrate numerous instances in which Kenergy clearly terminated review of the substantive aspects of Mr. Shocklee's applications after deciding, instead, to simply reject them.⁴ Kenergy, through its Response, improperly recharacterizes this evidence as demonstrated through the following statement:

Mr. Shocklee's position still appears to be that Kenergy was under an obligation to provide multiple reasons why his applications for net-metering interconnection were rejected.⁵

While Mr. Shocklee asked Kenergy to provide the reason(s) for the rejection of his applications, Mr. Shocklee has consistently stated in and since the Complaint that the applications were rejected and the only reason given for their rejection was the property ownership prerequisite. Kenergy's Response mischaracterizes Mr. Shocklee's argument.

Setting aside the mischaracterization, Kenergy's suggestion, through its Response, of a piecemeal filing review process is completely at odds with this Commission's filing review practice that Kenergy points to in its Response in support of its own argument. The Commission is entitled to take administrative notice of its own procedures for accepting or rejecting filings, and it should do so in that Kenergy has chosen to raise them and place them into issue through its Response. The Commission

³ Shocklee Renewed Motion for Disposition (tendered Sept. 17, 2024), pages 3 and 4; and also page 6, citing to the Order in KY PSC Case No. 2024-00066, "Providing proof of liability insurance as well as a **deed or tax bill are also new prerequisites** (Emphasis added)."

⁴ Shocklee Application for Rehearing (tendered Dec. 23, 2024), pages, 6 to 8.

⁵ Response page 2.

publishes filing requirements checklists on its website. When an application is tendered, it is reviewed by the Commission for compliance with the listed requirements. When the requirements have not been met, the Commission enters into the record a letter which identifies each deficiency which must be cured.

Kenergy stated its reason, property ownership, for rejecting Mr. Shocklee's applications for net metering service interconnection. Kenergy confirms through its Response that it will not accept any applications for net metering service in the absence of Mr. Shocklee providing proof of a property ownership prerequisite that is not in its Commission-approved tariffs.

2. Mr. Shocklee's pointing out that Kenergy will reject any further applications for net metering interconnection (based upon a property ownership requirement) is admitted by Kenergy and is not a new argument.

Kenergy's Response, at page 3, argues that a future application for net metering interconnection is a new argument. Kenergy's position ignores numerous legal and factual problems with its position. The law and record demonstrate that Kenergy is wrong.

KRS 278.400 states, at pertinent part:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, **apply for a hearing with respect to any of the matters determined.** Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. (Emphasis added.)

The December 4, 2024 Order includes the following finding of fact and conclusion of law.

Mr. Shocklee argued that his applications should not have been rejected based on his lack of fee simple ownership. The

Commission finds that this issue is moot because the 15 percent rule prevents Mr. Shocklee from interconnecting.⁶

Therefore, the Commission's determination of mootness is clearly a matter within the scope of "any matters determined," and Mr. Shocklee is entitled, pursuant to KRS 278.400, to challenge the determination. Mootness, as an issue in the instant proceeding, did not exist prior to the December 4, 2024 Order. Mr. Shocklee is entitled, pursuant to the plain language of KRS 278.400, to address and contest a finding of fact and conclusion of law presented, for the first time, through the December 4, 2024 Order.

The only limitation upon Mr. Shocklee through KRS 278.400 is that he could only offer additional evidence upon a demonstration that such evidence "could not with reasonable diligence been offered on the former hearing." Mr. Shocklee does not violate this rule in that the only evidence Mr. Shocklee relies upon is already in the existing record. Further, no exercise of reasonable diligence enables Mr. Shocklee to address a finding of fact or conclusion of law prior to their rendition.

Mr. Shocklee applied for "net metering service," and his applications were wrongfully rejected. This position has been Mr. Shocklee's position throughout the instant case. His Complaint, per its plain language, concerns Kenergy's rejection of his applications for net metering service. Kenergy's Response skips over this point. For examples, from numerous statements in the Complaint, he clearly states that he is contesting Kenergy's denial of his applications for net metering service:

Find that KRS 278.465 through KRS 278.468 do not establish ownership of the real property in fee simple of the premises upon which net metering service is located is a requirement of obtaining net metering service.

⁶ Order (Ky. P.S.C. Dec. 4, 2024), page 7.

...

Find that Kenergy's rejection of Complainant's net metering service interconnection applications for review and processing (for approval or denial) demonstrates that service cannot be obtained by Complainant.⁷

As demonstrated through his interconnection applications tendered to Kenergy and supplied as Exhibits to the Complaint, Kenergy uses a ***single (the same) form*** application for both Level 1 and Level 2 net metering service interconnection requests.⁸ Kenergy, in its Response, states:

Any future applications for net-metering interconnection by Mr. Shocklee would need to be addressed at the time they are filed.⁹

Because Kenergy uses the same (single or joint) form for applying for net metering service through Level 1 and Level 2 interconnection, Kenergy's position concerning Mr. Shocklee's applications for net metering service is demonstrated as fixed. In the absence of Mr. Shocklee's demonstrating property ownership, Kenergy will not accept Mr. Shocklee's interconnection applications whether for Level 1 or Level 2 service in that each service is sought through the exact same application form for which Kenergy applies to Mr. Shocklee a property ownership prerequisite that is not in its Commission-approved tariffs. Kenergy's wrongful conduct has already occurred, and it should be addressed through the instant case.

⁷ Complaint (tendered Dec. 18, 2023), page 8, paragraphs g and j.

⁸ Complaint (tendered Dec. 18, 2023), Exhibits B and C.

⁹ Response, page 3.

Kenergy's Response cannot demonstrate any actual distinction between the application for interconnection whether for Level 1 or Level 2 service because Kenergy uses the exact same form for each. Kenergy's application for interconnection speaks in terms of different processes regarding service without a distinction as to the form of the application (because there is none – both types of service use the same application form).

Kenergy's net metering service is pursuant Schedule 46 – Net Metering Tariff which demonstrates in numerous instances the interrelationship between Level 1 and Level 2 service interconnections. Kenergy's application for interconnection uses a single form because of this clear interrelationship. In fact, Kenergy makes clear through its Response that Kenergy does not recognize any difference between Level 1 and Level 2 service as to the property ownership prerequisite.

Kenergy wants Mr. Shocklee to continue to expend considerable resources and potentially wait another full year (through further litigation) before he gets an answer to his question of whether Kenergy is required to accept his applications for net metering service interconnections (which would be through the same form through which he has already applied and which has been rejected). Mr. Shocklee is entitled to point out exactly why the legal controversy in the instant case is not moot.

As stated in support of the Application for Rehearing, the December 4, 2024 "Order expressly discusses tariff provisions for the processing of Level 2 applications, which require Kenergy to 'meet with **applicants** [Emphasis in original].'"¹⁰ The Order, itself, points to Level 2 applications. Mr. Shocklee is fully entitled pursuant to KRS 278.400 to address a finding raised by the Commission in the December 4th Order. Through his

¹⁰ Order (Ky. P.S.C. Dec. 4, 2024), page 8.

Application for Rehearing and through his pleadings in the instant case, Mr. Shocklee has demonstrated (and Kenergy confirms in its Response) that there is no path forward other than a successive complaint case for Mr. Shocklee to seek review and processing of an application for interconnection for net metering service. The rejection of his applications based upon the ownership requirement, as confirmed by Kenergy in its Response, is not moot.

Hence, through its plain and express statement in its Response, Kenergy states that it will not accept Mr. Shocklee's net-metering interconnection applications until he "cures" the property ownership prerequisite.¹¹ Mr. Shocklee has stated throughout this proceeding that property ownership is not a prerequisite in Kenergy's Commission-approved tariffs for acceptance of his interconnection applications; therefore, they should not have been rejected. Kenergy, thus, proves that the issue is not moot. It has no intention of accepting Mr. Shocklee's applications for net metering service absent a demonstration of property ownership, a prerequisite that the Commission has already determined is not in Kenergy's Commission-approved tariffs.

WHEREFORE, Complainant respectfully files his Reply and moves this Commission to enter an Order granting rehearing of the December 4, 2024 Order and determine the single issue raised through his Complaint,

Respectfully submitted,

/s/ David E. Spenard

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¹¹ Response, page 2.

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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, December 30, 2024, in conformity with the guidance in the requests for information in the instant case.

/s/ David E. Spenard _____
David E. Spenard

Notice And Certification Concerning Service

Undersigned counsel certifies that he has served a true and correct copy of the pleading upon the attorneys at the electronic mail addresses listed below on this 30th day of December 2024.

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