

July 29, 2024

PUBLIC SERVICE
COMMISSION**Via Electronic Mail Message**

Linda C. Bridwell, P.E., Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, Kentucky 40601
PSCED@ky.gov

RE: Case No. 2024-00122
*Electronic Application for a Declaratory Order of Jackson Purchase
Energy Corporation*

Dear Ms. Bridwell:

Kentucky Solar Industries Association, Inc. (“KYSEIA”), by and through Counsel, submits for inclusion into the case file record for the above-styled docket the following written public comments upon the Application for a Declaratory Order filed by Jackson Purchase Energy Corporation (“Jackson Purchase Energy”). KYSEIA respectfully submits that these written public comments may assist the Kentucky Public Service Commission (“Commission” or “PSC”) and asks that they be taken into consideration in the instant case.

KYSEIA is a Kentucky nonprofit corporation in good standing with the Kentucky Secretary of State. The purpose of KYSEIA includes, among other things, promoting the exchange of knowledge for solar energy and advocacy on behalf of solar energy constituents and members. KYSEIA has been active before this Commission through numerous dockets through both intervention and the submission of written comments.

KYSEIA states the following: (1) The Verified Application tendered by Jackson Purchase Energy does not satisfy the requirements of 807 KAR 5:001 Section 19. (2) The Verified Application fails to distinguish between net metering and small power production or cogeneration facilities. (3) The Verified Application misses the mark when referencing KY PSC Case No. 2023-00309.¹

I. ANALYSIS.

A. The Verified Application tended by Jackson Purchase Energy does not satisfy the requirements for obtaining a declaratory order.

¹ *Electronic Petition of Kenergy Corp. for Declaratory Order*, (filed Sept. 13, 2023 as corrected by filing on Nov. 2, 2023) (hereinafter “Case No. 2023-00309”).

807 KAR 5:001 Section 19 (1) states:

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.

807 KAR 5:001 Section 19 (2)(d) requires an applicant:

Identify all statutes, administrative regulations, and orders to which the application relates.

Jackson Purchase Energy offers the following: For net metering, without identifying any specific administrative regulation, Jackson Purchase Energy states it has “reviewed the net metering regulations.”² For small power production or cogeneration facilities, Jackson Purchase Energy identifies, only, 807 KAR 5:054 Section 6(6).³ For the latter, Jackson Purchase Energy identifies a portion of the administrative regulation discussing “an owner operator”⁴ without any identifying any need for the Commission to construe the meaning or scope of Section 6(6).

Jackson Purchase Energy offers the conclusion that the requirement for an “owner operator” identified in 807 KAR 5:054 Section 6(6) pay costs in certain scenarios demonstrates the existence of a legal requirement for a small power production or cogeneration facility seeking to interconnect with Jackson Purchase Energy must be owned and operated by a member of the utility. (The flaw in this logic is addressed in the section of these Written Comments addressing small power production or cogeneration.)

Net metering in Kentucky is regulated pursuant to state statutes (primarily KRS 278.654 through KRS 278.468) whereas the Commission implements federal law for qualifying facilities (“QFs” – small power production and cogeneration facilities) created by Congress through the Public Utility Regulatory Policies Act of 1978 (“PURPA”). As explained in 807 KAR 5:054, at pertinent part discussing

² Verified Application (filed Apr. 25, 2024) at page 2.

³ Verified Application (filed Apr. 25, 2024) at page 3.

⁴ Verified Application (filed Apr. 25, 2024) at page 3.

necessity, function, and conformation of the Commission’s administrative regulation promulgated for small power production and cogeneration: “Section 210(f) of this Act [PURPA] requires the state regulatory authority with jurisdiction over electric utilities to implement the FERC rules. As the state regulatory authority for Kentucky, the Public Service Commission proposes to implement those rules.”

Conspicuous through their absence are any mentions of PURPA or Federal Energy Regulatory Commission (“FERC”) rules for QFs. Without identifying or discussing federal law, Jackson Purchase Energy seeks a declaration that it complies with federal statutes and rules it declines to discuss.

Jackson Purchase Energy, therefore, requests through the same application a declaration for matters governed by two (2) different legal regimes, one state and one federal. The Verified Application, separate from failing to identify let alone discuss any state or federal statutes, does not identify the distinction between the sources of the Commission’s exercise of authority or the differences in a utility’s responsibilities in these areas.

On its face, the Verified Application of Jackson Purchase Energy fails to present an application meeting the Commission’s requirements for a declaratory order. The Verified Application is an unsubstantiated request for a declaration that Jackson Purchase Energy “is following its tariffs, the statutes and regulations”⁵ in the absence of a “complete, accurate, and concise statement of the facts upon which the application is based”⁶ or the identification of “all statutes, administrative regulations, and orders to which the application relates.”⁷ For these reasons, the Verified Application does not support the entry of a declaratory order by this Commission.

B. The Verified Application fails to distinguish between net metering and small power production or cogeneration facilities.

As described in the prior Section, the Verified Application does not distinguish between Kentucky law governing net metering facilities and the Commission’s administrative regulation implementing PURPA requirements for QFs in Kentucky. When the pertinent legal requirements are identified, the plain language of Kentucky’s net metering law does not require (or permit) further declaration on any point alleged by the Verified Application to be at issue. The

⁵ Verified Application (filed Apr. 25, 2024) at page 3.

⁶ 807 KAR 5:001 Section 19(2)(b).

⁷ 807 KAR 5:001 Section 19(2)(d).

Verified Application completely fails to offer a cogent argument on any point alleged by the Verified Application to be at issue concerning QFs.

C. Net Metering – Ownership and Interconnection.

Jackson Purchase Energy’s application omits the obvious regarding net metering, specifically KRS 278.465(1). Kentucky’s net metering laws within KRS Chapter 278 contain definitions. In terms of “Eligible customer-generator,” KRS 278.465(1) expressly defines this phrase to mean “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.” State statute, therefore, through plain language conclusively answers the question regarding ownership with respect to Kentucky’s net metering law.

The PSC, as a creature of statute, has no authority to enlarge or subtract from the plain language of KRS 278.465(1) supplied by the General Assembly. A reading of the plain language of Jackson Purchase Energy’s net metering tariff demonstrates that net metering is offered to an “eligible Member-generator” meaning “a retail electric Member of JPEC with a generating facility that” is, among other things, “located on the Member’s premises” and “owned and operated by the Member.”⁸

Jackson Purchase Energy fails to offer any explanation as to why it is confused, does not understand, or is otherwise in need of an Order of the Commission confirming that a Member of Jackson Purchase Energy must own and operate the generating facility on the Member’s premises.⁹ The statutes already answer this question. The person applying for net metering service through Jackson Purchase Energy’s net metering tariff must own and operate the electric

⁸ *Jackson Purchase Energy Corporation Rates, Rules and Regulations for Furnishing Electric Service*, P.S.C. KY No. 20, First Revised Sheet No. 27 (effective Jan. 1, 2020).

⁹ For reasons of record in KY PSC Case No. 2023-00421, *Roger D. Shocklee, Complainant v. Kenegy Corp., Defendant*, (filed Dec. 18, 2023), there is no requirement in KRS Chapter 278 that a person must be the fee simple owner of the premises upon which an eligible customer-generator is located. See Memorandum in Support of Motion for Summary Disposition in Favor of the Complainant Based Upon the Existing Record (filed Feb. 16, 2024) at page 5 through 9. Nonetheless, in the instant case ownership of the “solar facility” is, arguably, at issue rather fee simple ownership of the premises upon which the solar facility is located is at issue. Therefore, Case No. 2023-00421 is as unrelated to this matter as Case No. 2023-00309.

generating facility.¹⁰ Jackson Purchase Energy demands proof that the statutes say what they say and, likewise, that its own tariffs say what they say. A declaratory order in this instance is unwarranted because there is nothing to declare.¹¹

D. Small Power Production or Cogeneration – Ownership and Interconnection.

Jackson Purchase Energy’s application omits the obvious regarding small power production or cogeneration, specifically the actual language of its tariff provisions for the service. Regarding “Availability of Service,” Jackson Purchase Energy’s tariff states:

Available only to qualifying small power production or cogeneration facilities, 100 kW or below, which have executed an “Agreement for Purchase of Electric Energy” (a sample of which is attached hereto as an exhibit for reference) with JPEC.¹²

Thus, unlike its tariff provision concerning net metering which, pursuant to state statute, expressly requires a generator “owned and operated by the Member,”¹³ Jackson Purchase Energy’s tariff for small power production or cogeneration less than 100 kW (“Schedule SPC-A”) does not address this issue as it pertains to QFs falling within the scope of Schedule SPC-A. Jackson Purchase Energy seeks the Commission, through a declaratory order, to amend its tariff provisions to determine an issue that Jackson Purchase Energy has yet to address and which is not governed by state statute addressing net metering requirements.

¹⁰ See KRS 278.465(1).

¹¹ Even if the Verified Application complied with 807 KAR 5:001 Section 19 **and** presented a request for a declaration concerning the application of law upon a complete set of facts involving “a person substantially affected,” it remains undemonstrated by Jackson Purchase Energy how the Commission may declare KRS 278.465(1) to mean anything other than its plain language.

¹² *Jackson Purchase Energy Corporation Rates, Rules and Regulations for Furnishing Electric Service*, P.S.C. KY No. 20, Sheet No. 55 (effective Feb. 2, 2014).

¹³ *Jackson Purchase Energy Corporation Rates, Rules and Regulations for Furnishing Electric Service*, P.S.C. KY No. 20, First Revised Sheet No. 27 (effective Jan. 1, 2020).

If Jackson Purchase Energy is unhappy with or confused by the plain language of its existing Commission-approved tariffs or their failure to properly address an issue, then it should file revised tariffs. Revision of tariffs is comprehensively addressed in 807 KAR 5:011 and is the proper procedural avenue for Jackson Purchase Energy to advance its efforts concerning SPC-A. Jackson Purchase Energy rather than the Commission has the responsibility for the management of its utility including the tariff provisions which it proposes for its rates and service.

807 KAR 5:054 Section 6(6) is identified by Jackson Purchase Energy as bearing upon the question of whether a QF “must also be owned and operated by the member.”¹⁴ Nonetheless, Jackson Purchase Energy fails to identify anything in PURPA or in the federal rules supporting such a reading or the logic that an owner of a QF must necessarily be a member of Jackson Purchase Energy.

Section 6(6) states, at pertinent part:

Owners of qualifying facilities shall be required to pay for any additional interconnection costs to the extent that those costs are in excess of costs that the electric utility would have incurred if the qualifying facility's output had not been purchased.

The flaw in Jackson Purchase Energy's logic is clear. While an owner of a QF is required to pay certain costs, 807 KAR 5:054 does not define “owner” and cannot, of itself, support the premise that an “owner” of a QF must be a member of the utility because this administrative regulation is not limited to electric distribution cooperatives and, therefore, does not address the issue of membership. Jackson Purchase Energy fails to identify any express language in PURPA, the federal rules, state law, or its own SPC-A tariff requiring (or even supporting) the declaration that it seeks. A declaration in this instance concerning QF's is unwarranted because the premise is unproven (and should be addressed in the first instance through a proposed revision to SPC-A).

E. The Verified Application misses the mark when referencing KY PSC Case No. 2023-00309.¹⁵

Each pleading and Order in the record in KY PSC Case No. 2023-00309 speaks for itself and is incorporated by reference. Even at a glance, the matters

¹⁴ Verified Application (filed Apr. 25, 2024) at page 3.

¹⁵ *Electronic Petition of Kenergy Corp. for Declaratory Order*, (filed Sept. 13, 2023, as corrected by filing on Nov. 2, 2023) (hereinafter “Case No. 2023-00309”).

presented through the instant request for a declaratory Order do not concern the question before the Commission in Case No. 2023-00309.

Per the proposed resolution in the Petition sought by Kenergy in Case No. 2023-00309:

The proposed resolution [by Kenergy] is to obtain an order from the Commission supporting Kenergy's interpretation of Schedule 46 in that 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. Further, that any upgrades to Kenergy's system necessary to allow the connection of the proposed solar system must be borne by the member desiring to install the solar generating system and should not be borne among the membership of Kenergy as a whole.¹⁶

Kenergy, in response to a Commission Order, states:

The statutes and tariffs at issue are KRS 278.465, et seq., specifically, KRS 278.466(9) and the Kenergy tariffs referenced in the Petition.¹⁷

Case No. 2023-00309 does not concern membership in Kenergy or ownership of eligible electric generating facilities. Assuming for argument that the Commission provided the declaration requested by Kenergy, or, alternatively, that it declined to provide the declaration, the disposition of Case No. 2023-00309 does not address the questions presented through the instant request for a declaration.

II. CONCLUSION.

For the foregoing reasons, KYSEIA states that the Verified Application tendered by Jackson Purchase Energy 807 KAR 5:001 Section 19, and the Commission should not enter an order declaring any substantive matter presented through the application. The Verified Application fails to distinguish between net metering and small power production or cogeneration facilities, and the Commission should not enter an order declaring any matter concerning PURPA and the federal rules for qualifying facilities. The Commission should, instead, order Jackson Purchase Energy to file revisions to its Schedule SPC-A for small power production or cogeneration less than 100 kW as the proper means to

¹⁶ Case No. 2023-00309, Petition (filed Sept. 13, 2024) at pages 3 and 4.

¹⁷ Case No. 2023-00309, Corrections to Petition (filed November 2, 2023).

address any problems or concerns with that tariff provision.

Respectfully submitted,

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