

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION FOR A)	CASE NO.
DECLARATORY ORDER OF JACKSON)	2024-00122
PURCHASE ENERGY CORPORATION)	

ORDER

On April 25, 2024, Jackson Purchase Energy Corporation (Jackson Purchase Energy) filed an application for declaratory order requesting an interpretation of Schedule NM (Net Metering) and Schedule SPC-A (Small Power Production/Cogeneration) of its Tariff. No motions to intervene have been filed, and this matter stands ready for decision on the record.

BACKGROUND

Jackson Purchase Energy is a jurisdictional utility that provides retail electric service in Ballard, Carlisle, Graves, Livingston, Marshall and McCracken counties, Kentucky. Jackson Purchase Energy offers net metering service to its members pursuant to Schedule NM of its tariff, which sets forth the terms under which members may interconnect a solar facility to Jackson Purchase Energy's distribution system. Schedule NM provides that net metering service is available to "eligible Member/generators." Schedule NM defines an eligible Member/generator as a member with a generating

facility that meets six conditions, including that it “[i]s owned and operated by the Member.”¹

Jackson Purchase Energy provides interconnection to its distribution system to small power production or cogeneration facilities of less than 100kW pursuant to Schedule SPC-A of its tariff. Schedule SPC-A provides that the service is “[a]vailable only to qualifying small power production or cogeneration facilities, 100 kW or below, which have executed an ‘Agreement for Purchase of Electric Energy’ . . . with [Jackson Purchase Energy].”

Jackson Purchase Energy requested in its application that the Commission issue a declaratory order that a leased generating facility is not eligible for interconnection under either Schedule NM or Schedule SPC-A of its tariff. Jackson Purchase Energy stated it seeks a declaratory order on this issue due to the number of applications for interconnection it is receiving from members that it claims do not own and operate the proposed generating facility.

LEGAL STANDARD

Jackson Purchase Energy filed its application pursuant to Section 19 of 807 KAR 5:001. The regulation provides in pertinent part:

- (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.

¹ 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).

(2) An application for declaratory order shall:

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(d) Identify all statutes, administrative regulations, and orders to which the application relates;

The issuance of a declaratory order is permissive and at the discretion of the Commission.²

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.”

Commission regulation 807 KAR 5:054 sets forth the obligation of each electric utility to purchase power from Small Power Production and Cogeneration facilities. The regulation provides in pertinent part:

Section 1:

(3) "Cogeneration facility" means equipment used to produce electricity and another form of useful energy which is used for industrial purposes or commercial heating or cooling purposes through sequential use of input energy and which facility meets criteria at 18 C.F.R. Part 292.203(b) and 292.205, as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

(10) "Small power production facility" means an arrangement of equipment for the production of electricity with capacity no greater than eighty (80) megawatts, which equipment is located within a one (1) mile radius or, if hydroelectric facilities, on the same impoundment of water, and which

² Case No.2021-00370, *Electronic Investigation of the Rates, Services and Facilities of East Kentucky Power Company* (Ky. PSC Oct.8, 2021) at 5.

equipment is powered at least seventy-five (75) percent by biomass, waste, renewable resources, or any combination thereof and not more than twenty-five (25) percent by coal or oil or natural gas or any combination thereof and which meets criteria at 18 C.F.R. Part 292.204 as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

Section 6:

(1) Each electric utility shall purchase any energy and capacity which is made available from a qualifying facility . . .

(6)(a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. 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.

DISCUSSION AND FINDINGS

Jackson Purchase Energy asserted in its application that a “leased solar facility (not owned and operated by the member)” is not eligible for interconnection under Schedule NM or Schedule SPC-A of its tariff. Jackson Purchase Energy, however, did not provide any examples of what it referred to as a “leased solar facility” nor did it define the term other than as a facility that is “not owned or operated by the member.” Jackson Purchase Energy’s application thus lacks “a complete, accurate, and concise statement of the facts upon which the application is based,” as is required by 807 KAR 5:001, Section 19(2)(b).

Jackson Purchase Energy also failed to identify or discuss in its application the statutes, regulations, and orders that obligate electric utilities to provide net metering and small power production/cogeneration interconnection services, as is required by 807 KAR 5:001, Section 19(2)(d). Specifically, Jackson Purchase Energy did not identify or discuss

in its application KRS 278.466, the statute that requires electric utilities to make net metering available to eligible customer-generators, or 807 KAR 5:054, the Commission regulation that requires electric utilities to interconnect with and purchase energy from small power production and cogeneration facilities. Moreover, Jackson Purchase Energy did not address the Commission's order in Case No. 2008-00169,³ in which the Commission established interconnection and net metering guidelines and uniform net metering tariff language for all electric utilities.

Schedule NM – Net Metering

As noted, Jackson Purchase Energy asserted that a “leased solar facility (not owned and operated by the member)” is not eligible for interconnection under Schedule NM of its tariff. Schedule NM provides that net metering service is available to “eligible Member/generators.” An eligible Member/generator is a member with a generating facility that meets six conditions, including that the facility “[i]s owned and operated by the Member” and has “the primary purpose of supplying all or part of the Member's own electricity requirements.” The tariff language is consistent with the definition of “eligible customer-generator” in KRS 278.465(1) 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.

Commission Staff is not aware of any precedent applying this language in the context of a generating facility leased to a utility customer.

³ Case No. 2008-00169, *Interconnection and Net Metering Guidelines for Retail Electric Suppliers and Qualifying Customer-owned Generators* (Ky. PSC Jan. 8, 2009)

The Commission finds that Jackson Purchase Energy’s application for a declaratory order that a generating facility leased by a customer/member from a third-party is not eligible for interconnection under Jackson Purchase Energy’s net metering tariff should be denied. As noted above, Jackson Purchase Energy neither provided examples of the leased solar facilities proposed by its members nor did it sufficiently define the term. Additionally, under Kentucky law there are many potential forms of ownership, thus, depending on the terms of the agreement, a member could have an ownership interest in leased property. Jackson Purchase Energy did not address any possible legal theories in its application and did not provide sufficient factual parameters for the Commission to make a substantive determination.

The Commission established interconnection and net metering guidelines and uniform net metering tariff language for all electric utilities, including standards for eligible facilities, in Case No. 2008-00169.⁴ As noted in the final Order, the Commission adopted these guidelines and tariff language in accordance with amendments to existing statutory net metering requirements that were “designed to increase the number of net metering customers.”

Schedule SPC-A – Small Power Production and Cogeneration

Jackson Purchase Energy argued that Schedule SPC-A of its tariff requires the member/applicant to be the owner and operator of the generating facility to qualify for interconnection. Jackson Purchase Energy stated that this requirement is also reflected in the sample agreement for the purchase of electricity from a small power production or cogeneration facility. Finally, Jackson Purchase Energy noted that 807 KAR 5:054,

⁴ Case No. 2008-00169, Jan. 8, 2009 Order.

Section 6(6), provides that “owners” of qualifying facilities must pay for any extra interconnection costs.

The Commission finds that Jackson Purchase Energy’s request for an order declaring that ownership is condition of the SPC-A tariff should be denied. Jackson Purchase Energy’s tariff does not restrict small power production or cogeneration service for facilities less than 100kW to facilities owned and operated by the member/applicant.

Schedule SPG-A of Jackson Purchase Energy’s tariff states that service is:

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.

Schedule SPG-A does not contain an ownership requirement.

The sample power purchase agreement, which Schedule SPG-A notes is only a “starting point for negotiation, likewise does not establish an ownership requirement for service under SPG-A. A “WHEREAS” clause of the agreement recites “that the seller owns and operates, or intends to construct, own and operate, an electric generating facility which qualifies as a small power production facility or cogeneration facility.” The sample agreement assigns to the seller “sole responsibility for the design, construction, installation, ownership, safety, operation and maintenance of the qualifying facility.” Jackson Purchase Energy’s obligation under the contract to purchase electricity from a member, however, is not conditioned on the member owning as opposed to leasing the facility.

Similarly, although the regulation cited by Jackson Purchase Energy, 807 KAR 5:054, Section 6(6), assigns responsibility for extra interconnection costs to “owners” of qualifying facilities, it does not condition a utility’s obligation to purchase energy from a

qualifying facility on the customer's ownership of the generating facility. The only restriction on ownership is that a "qualifying facility" cannot be "owned in equity interest greater than fifty (50) percent by a person primarily engaged in generation of electric power" other than by operation of a qualifying facility.⁵

More importantly, as with the request for a declaratory order regarding net metering, Jackson Purchase Energy provided no information regarding the nature of potential leasing or financing arrangements. Even if some arrangements might not be eligible for interconnection under Schedule SPG-A, Jackson Purchase Energy's application does not provide a complete, accurate, and concise statement of the facts relevant to the issue and thus lacks sufficient factual parameters for the Commission to make a blanket determination on third-party ownership.

IT IS THEREFORE ORDERED that:

1. Jackson Purchase Energy's application for declaratory order is denied.
2. This case is closed and removed from the Commission's docket.

⁵ 807 KAR 5:054, Section 1(8).

PUBLIC SERVICE COMMISSION

Chairman



Vice Chairman

May Pat Reyer

Commissioner



ATTEST:

Linda C. Bridwell

Executive Director

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KENTUCKY 40509

*Brittany H. Koenig
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KENTUCKY 40509

*Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001

*Greg Grissom
Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001

*Heather Temple
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KENTUCKY 40509

*Travis Spiceland
Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001