

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

CLARK ENERGY COOPERATIVE, INC.)
_____) CASE NO.
ALLEGED FAILURE TO COMPLY WITH) 2012-00219
ADMINISTRATIVE REGULATIONS)

COOPERATIVE'S RESPONSE TO ALLEGATIONS

In response to the Commission's allegations outlined in its Order entered herein on June 25, 2012, and in compliance with said Order's requirement for same, Clark Energy Cooperative, Inc. ("Clark") respectfully submits this response.

Clark has not willfully failed to comply with KRS 278.020, believing at all times that the construction it, a retail electric supplier, undertook prior to filing, on February 28, 2012, its application for a Certificate of Public Convenience and Necessity ("CPCN") for construction of certain improvements and additions to its existing plant in accordance with its 2010-2014 Construction Work Plan ("CWP") fell within the statute's exception for service connections to electric consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business.

Nevertheless, Clark recognizes that at the time a genuine disagreement existed between it and the Commission concerning the interpretation of the statute and, in particular, the manner in

which Clark took action related to its 2010-2014 CWP--and the timing employed--and that the Commission may opt to assess a civil penalty therefor. Clark respectfully requests that the Commission not assess said penalty.

Recognizing that a number of Kentucky electric cooperatives feel CWP projects should be considered "ordinary course of business" and thus exempted from the need for a CPCN (an interpretation Clark obviously believes is reasonable), the Commission's Executive Director, Jeff Derouen, and other Commission staff met with the members of the Kentucky Association of Electric Cooperatives ("KAEC") in Louisville on May 22, 2012, which meeting Clark's Vice President of Engineering and Operations, Scott Sidwell, attended. At said meeting, Commission representatives and KAEC members discussed a proposal to consider Construction Work Plans as a compilation of individual projects rather than as one project. In a letter to Mr. Derouen dated June 4, 2012, Paul G. Embs, Clark's President and C.E.O., recommended adoption of the proposal on behalf of Clark.

Given the reasonableness of the interpretation of KRS 278.020 that CWP projects should be considered "ordinary course of business" and thus exempted from the need for a CPCN, that such interpretation is so widely held by Clark and its peers across the Commonwealth, and that the Commission and Kentucky's cooperatives are poised to begin a course of dealing consistent with the

proposal outlined above that comports with Clark's interpretation of the statute, Clark respectfully requests the Commission not penalize Clark for beginning construction on its 2010-2014 CWP without first having obtained a CPCN.

WHEREFORE, Clark Energy Cooperative, Inc. respectfully requests the following:

1) That the Commission not impose a civil penalty against it; and

2) That an informal teleconference with Commission staff be scheduled at the convenience of the Commission.

DATED: This 9th day of July, 2012.

CLARK ENERGY COOPERATIVE, INC.

By: _____

Paul G. Embs
**PAUL G. EMBS, President
and C.E.O.**

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GRANT, ROSE & PUMPHREY

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