

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CARLEN PIPPIN)	
)	
COMPLAINANT)	
)	
v.)	CASE NO.
)	2011-00041
SHELBY ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

ORDER

On December 2, 2010, Complainant, Carlen Pippin, filed a Complaint against Shelby Energy Cooperative, Inc. ("Shelby Energy"). On February 10, 2011, the Commission issued an Order finding that, pursuant to 807 KAR 5:001, Section 12(4)(a), the Complaint did not constitute a prima facie case. That Order required the Complainant to amend his Complaint within 30 days to state fully, clearly, and with reasonable certainty the acts or things allegedly done or omitted to be done by the Defendant, Shelby Energy, which form the substance of the Complaint. The Order further required Complainant to "make reference, where practicable, to the law(s), regulation(s), or order(s) of which a violation is claimed and any other matters or facts necessary to inform the Commission regarding the details of the alleged violation," including a detailed description of how the documents attached to the original Complaint support the allegations made therein.

On March 10, 2011, Complainant timely filed an Amended Complaint. The

Amended Complaint provides further discussion of the matters raised in the December 2, 2010 Complaint and references a “potential” violation of KRS 278.2213(6), (8), and (11). However, the information and allegations provided in the Amended Complaint, taken together with the information and allegations in the December 2, 2010 original Complaint, do not establish a prima facie case against Shelby Energy. Therefore, for the reasons explained herein, the Commission finds that the Amended Complaint should be dismissed.

The original Complaint listed three categories of concern: (1) conflicts between Shelby Energy’s answers at a Commission hearing and its answers to member-customers (this category is referred to herein as “conflicting answers”); (2) fiscal irresponsibility by Shelby Energy; and (3) Shelby Energy’s lack of transparency. For each of those categories of concern, Complainant cited a number of specific incidents to support his Complaint.

With regard to the first category of concern—conflicting answers—the Complaint cited the hearing testimony of Shelby Energy’s CEO, Debbie Martin, in Commission Case No. 2009-00410,¹ wherein she stated that Shelby Energy had filed with the Commission an amendment to its 2005-2009 Construction Work Plan, when, in fact, that amendment had not been filed at that time. The Complainant also pointed to Ms. Martin’s testimony at that hearing that loan funds were being used for an AMI (Advanced Metering Infrastructure) project² whereas, Shelby Energy later stated, in

¹ Case No. 2009-00410, Application of Shelby Energy Cooperative, Inc. for an Adjustment of Rates, June 2, 2010 Hearing, Video log at 10:27:05 a.m.

² Id. at 10:27:00 a.m.

response to a question from certain member-customers and in a newspaper interview, that loan funds were not being used for the project. The Complaint also cited Ms. Martin's June 2, 2010 testimony regarding Shelby Energy's application for a \$264,000 grant from the Kentucky Department for Energy Development and Independence ("DEDI") to help defray the cost of AMI meters—a grant which Shelby Energy later determined not to accept due to "monitoring and tracking" costs associated with administering the grant.³

The Amended Complaint also includes these same three incidents of conflicting answers, while adding a claim that Shelby Energy's decision to reject the \$264,000 grant for its AMI project resulted in the need to file Case No. 2010-00331.⁴

Regarding the second category of concern—fiscal irresponsibility—the Complaint cited the Commission's decision to deny Shelby Energy rate recovery of several expenditures in its most recent rate case. This denial is alleged to be evidence that "[b]y failing to follow regulations and by expending funds in inappropriate ways, Shelby Energy continues to ignore economic reality." The Complaint also cited Shelby Energy's failure to apply for a Certificate of Public Convenience and Necessity ("CPCN") prior to undertaking its plan to install AMI meters on its system as further evidence of fiscal irresponsibility.

³ The Commission notes that Ms. Martin mentioned the monitoring and reporting requirements for the grant in her June 2, 2010 testimony ("We got \$264,000 on a project that we are finalizing the paperwork on, that we have to show some data collection, and there's a lot of record keeping, that as long as we spend that \$264,000 we would get the grant for that, provided we provide that information"). Video log of June 2, 2010 hearing at 10:25:35 a.m.

⁴ Case No. 2010-00331, Request of Shelby Energy Cooperative, Inc. for a Temporary Deviation from Its Sample Meter Testing Plan, filed Sep. 14, 2010.

The Amended Complaint again cites Shelby Energy's failure to apply for a CPCN and states that such failure is a violation of KRS 278.280 because, "[i]t is unreasonable and unjust that the Shelby Energy [Board of Directors] spent \$3.1 million dollars of member-customers monies without prior approval" However, the Amended Complaint does not cite the Commission's denial of the expenditures in Shelby Energy's rate case in connection with the "fiscal irresponsibility" area of concern. It is not clear from the Amended Complaint whether the Complainant has specifically abandoned that issue with regard to the "fiscal irresponsibility" category of concern.

Regarding the third category—lack of transparency—the Complaint stated that Shelby Energy has "disregard[ed] the competitive bidding process" in its choice of contractors to remodel its offices and from whom to purchase its fleet vehicles and also cited Shelby Energy's "decision to award favored employees with year-end gifts totaling \$12,750.00." These issues are raised again in the Amended Complaint. However, Complainant now claims that Shelby Energy's failure to competitively bid its office remodeling project and vehicle purchases are "potential" violations of the affiliated transaction statute, KRS 278.2213, which governs conflicts of interest between a utility and an affiliate company of the utility. No additional issues or categories of concern are raised by the Amended Complaint.

Based on a review of the Complaint and the Amended Complaint, the Commission finds that none of the claims are sufficient to demonstrate a prima facie case that Shelby Energy has violated any provision of KRS Chapter 278, the Commission's regulations, or Shelby Energy's tariff. While we acknowledge that a number of issues may raise real concerns for the member-customers of Shelby Energy,

those issues are not within the jurisdiction of the Commission. Redress, if any, on those issues lies with Shelby Energy's Board of Directors.

To the extent that an issue exists regarding Shelby Energy's failure to obtain a CPCN from the Commission prior to embarking on its AMI program, the Commission is investigating that matter as a part of Shelby Energy's current construction work plan case.⁵ The Commission is also investigating the reasons Shelby Energy rejected the \$264,000 grant for its AMI program as a part of the construction work plan case.⁶

With regard to Ms. Martin's testimony about using loan funds to finance the AMI project, Shelby Energy's application in Case No. 2010-00244 states that it is:

[F]iling an application with RUS to arrange 100% financing of [construction work plan] CWP projects with the RUS treasury rate loan program. Contract and force accounts financed with internally generated funds and a short-term line of credit will be used until all loan approvals are granted. Said RUS financing will reimburse the general funds expended for the initial portion of the CWP and finance the balance of the CWP.

Therefore, the information in Shelby Energy's Application in Case No. 2010-00244 is consistent with the June 2, 2010 testimony in Case No. 2009-00410. To the extent that Shelby Energy's management provided responses to questions proffered by certain member-customers outside a case before the Commission or in response to questions by a journalist for a newspaper article, the Commission is without jurisdiction to take any

⁵ Case No. 2010-00244, Application of Shelby Energy Cooperative, Inc. for a Certificate of Public Convenience and Necessity for its 2010-2014 Construction Work Plan, filed Aug. 17, 2010.

⁶ See id. at Third Data Request of Commission Staff to Shelby Energy Cooperative, Inc. issued on January 14, 2011; Shelby Energy's Response to Commission Staff's Third Data Request filed on February 4, 2011; and Fourth Data Request of Commission Staff to Shelby Energy Cooperative, Inc. issued on March 7, 2011.

action with regard to those statements.

As to the filing of Case No. 2010-00331, the Commission finds that Shelby Energy's need to file that case was not a result of its decision to reject the grant monies from DEDI. Shelby Energy filed Case No. 2010-00331 to request that the Commission hold in abeyance any requirement that Shelby Energy conduct sample meter testing on the existing single-phase meters which it is removing from service under its AMI replacement program. In support of its application in that matter, Shelby Energy stated that, if its request for deviation was not granted, it would either have to go forward with sample meter testing, at an estimated cost of \$13,000, or be in violation of the sample meter testing program previously approved by the Commission in Case No. 2005-00276. Clearly, Shelby Energy would have had to file its request for deviation regardless of whether it accepted or rejected the DEDI grant. Therefore, that issue does not establish a basis for complaint against Shelby Energy.

Although the Amended Complaint alleges that Shelby Energy "potentially" violated KRS 278.2213(6), (8) and (11), it does not allege that a subsidiary of Shelby Energy performed the office renovations or sold vehicles to Shelby Energy. The only subsidiaries of Shelby Energy of which the Commission is aware are Shelby Energy Services Corporation and Shelby Energy Propane Plus, LLC. Shelby Energy's 2008 independent auditor's report states that Shelby Energy Services Corporation "provides overall business direction to Propane Plus," and "Propane Plus sells propane and related accessories to residential and commercial customers in central Kentucky."⁷ With regard to the "bidding information" in question, even if such information exists, the

⁷ Case No. 2009-00410, Shelby Energy Cooperative, Exhibit N, Independent Auditor's Report at Note 1, Summary of Significant Accounting Policies.

Commission is without jurisdiction to require a utility to release that information to a member-customer or any other person. Further, the Complainant does not allege any facts that indicate that the amounts paid by Shelby Energy for office renovations or vehicles were unreasonable so as to jeopardize continuity of electric service, or that the absence of competitive bidding violated any statute or regulation subject to enforcement by the Commission.

Finally, as to the "Employee Performance Bonus Policy," the Commission does not have jurisdiction over the specific terms of such policy. The bonuses of \$12,750 granted to employees in December 2009 were not included in the test-year expenses filed as a part of Shelby Energy's most recent rate case (Case No. 2009-00410), and those bonuses are not being recovered in Shelby Energy's rates. While Shelby Energy also paid employee bonuses in December 2008, those bonuses were excluded from Shelby Energy's most recent rate case so ratepayers are not paying for any employee bonuses.

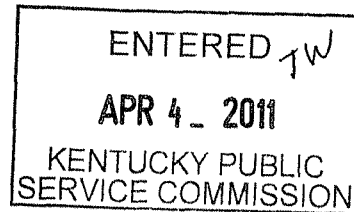
With regard to Complainant's assertion that the Commission is "charged to insure reasonable and just procedures," the Commission's jurisdiction is limited to ensuring *just and reasonable rates and service*. The Commission does not micro-manage utilities and does not analyze the need for, or reasonableness of, utility expenditures outside of rate cases absent a showing that continuity of service may be in jeopardy. To the extent that the Complainant and other member-customers are dissatisfied with certain expenditures made by Shelby Energy, those issues need to be presented to Shelby Energy's Board of Directors, since only they have the authority to control the utility's expenditures.

The Commission finds that the Complaint and the Amended Complaint do not set forth a prima facie case against Shelby Energy pursuant to 807 KAR 5:001, Section 12, and, therefore, the Complaint and Amended Complaint should be dismissed.

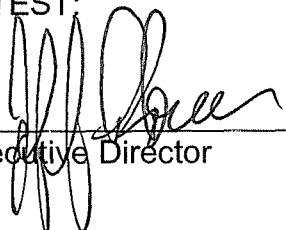
Wherefore, IT IS HEREBY ORDERED that:

1. The Complaint and Amended Complaint filed in this matter are hereby dismissed without prejudice.
2. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

Debbie Martin
President & CEO
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

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