COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST KENTUCKY POWER COOPERATIVE, INC. AND ITS MEMBER DISTRIBUTION COOPERATIVES FOR APPROVAL OF PROPOSED CHANGES TO THEIR QUALIFIED COGENERATION AND SMALL POWER PRODUCTION FACILITIES TARIFFS	)))))))	CASE NO. 2021-00198

O R D E R

On May 24, 2021, the Commission established this proceeding to investigate the reasonableness of East Kentucky Power Cooperative, Inc. (EKPC) and its 16 distribution cooperatives'[1] (Owner-Members) proposed revision to their tariffs for purchases from qualified cogeneration and small power production facilities (COGEN/SPP), with an effective date of June 1, 2021.[2] In the May 24, 2021 Order, the Commission suspended the tariff effective date for five months, up to and including October 31, 2021.[3]

There are no intervenors in this proceeding. EKPC responded to two rounds of discovery. A formal conference was held on September 10, 2021. EKPC responded to

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[1] Big Sandy R.E.C.C., Blue Grass Energy Cooperative Corp., Clark Energy Cooperative, Inc., Cumberland Valley Electric, Inc., Farmers R.E.C.C., Fleming-Mason Energy Cooperative, Inc., Grayson R.E.C.C., Inter-County Energy Cooperative Corporation, Jackson Energy Cooperative Corporation, Licking Valley R.E.C.C., Nolin R.E.C.C., Owen Electric Cooperative, Inc., Salt River Electric Cooperative Corp., Shelby Energy Cooperative, Inc., South Kentucky R.E.C.C., and Taylor County R.E.C.C.

[2] EKPC and its Owner-Members filed proposed revisions to COGEN/SPP tariffs on March 22, 2021. The Commission subsequently decided to initiate this proceeding.

[3] Due to an inadvertent error in the body of the May 24, 2021, the suspension date is listed as up to and including November 1, 2021. However, ordering paragraph 2 lists the correct suspension period, which is up to and including October 31, 2021.

one round of post-formal conference discovery. EKPC filed a brief regarding the use of capacity market auction results as the capacity payment component of COGEN/SPP rates on October 1, 2021. This matter now stands submitted for a decision.

LEGAL STANDARD

The Commission's review of tariff rates is set forth in KRS 278.030, which provides that a utility may collect fair, just and reasonable rates, and that the service the utility provides must be adequate, efficient and reasonable. The Commission promulgated regulations that govern small power production and cogeneration tariffs in 807 KAR 5:054 pursuant to Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). Commission regulation 807 KAR 5:054, Section 7, establishes the basis for compensation paid by an electric utility for the purchase of output from a qualifying facility (QF), defined as either a cogeneration facility or small power production facility.

Standard rates for purchases from a QF with a design capacity of 100 kW or less, established in 807 KAR 5:054, Section 7(2), must be just and reasonable to the electric customers of the utility, in the public interest and nondiscriminatory, and must be based on avoided costs, subdivided into an energy component and a capacity component. Avoided costs are defined in 807 KAR 5:054, Section 1(1) as incremental costs to the utility of "electric energy or capacity or both which, if not for the *purchase*" from a QF, the utility would "generate itself or purchase from another source" (emphasis added).

Standard rates for purchases from a QF with a design capacity of 100 kW or more, established in 807 KAR 5:054, Section 7(4), are based on avoided costs, subdivided into an energy component and a capacity component. The rates are used only as the basis for negotiating a final purchase rate with QF. Negotiated rates must be just and reasonable to the electric customers of the utility, in the public interest and nondiscriminatory.

Under both 807 KAR 5:054, Section 7(2) and Section 7(4), the basis for rates for power offered on an as available basis are based on the utility's avoided energy costs estimated at time of delivery, and rates for power offered on a legally enforceable basis are based at the option of the QF on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation (LEO) is incurred.[4]

PROPOSED QF/SPP TARIFFS

EKPC, along with its Owner-Members, proposed to change the rate schedules for COGEN/SPP purchases from dispatchable generation sources, both over 100 kW and equal to or less than 100 kW. For these tariffs, EKPC and its Owner-Members proposed to increase the capacity rate payable to the COGEN/SPP from $3.81 per kW-year to $7.86 per kW-year. EKPC and its Owner-Members proposed increases for both the time differentiated and non-time differentiated energy rates payable to the COGEN/SPP. The proposed time differentiated energy rates are provided for winter and summer peak and off-peak periods. Included in the proposed energy rates was a decrease in EKPC's administrative fee for PJM market participation costs from $0.00020 to $0.00016 per kWh.[5]

EKPC and its Owner-Members also proposed changes pertaining to COGEN/SPP purchases for non-dispatchable generation sources, both over 100 kW and equal to or

[4] The Commission notes that the Federal Energy Regulatory Commission (FERC) recently revised the basis for certain rates, including LEO, in FERC Order No. 872, effective date Feb. 16, 2021. The Commission will revise the relevant regulations to comport with the FERC decision.

[5] Tariff Application at 2–3. Note that the proposed rate schedules are mirrored in each of the 16 Owner-Member's proposed tariffs.

less than 100 kW. Specifically, for the non-dispatchable generation resources, EKPC proposed the same decrease as above in PJM market participation costs from $0.00020 to $0.00016 per kWh.[6]

DISCUSSION AND FINDINGS

As an initial matter, EKPC applies an incorrect legal standard for avoided costs. EKPC effectively bases its avoided costs on the incremental costs to *sell* the output from a COGEN/SPP. However, in accordance with 807 KAR 5:054, Section 1(1), EKPC should base avoided costs on the incremental costs that, but for the purchase from a COGEN/SPP the utility would have to either *purchase* or *generate*.

Based upon a review of the case record and being otherwise sufficiently advised, the Commission finds that the COGEN/SPP tariffs' rates proposed by EKPC and its Owner-Members are not fair, just and reasonable, and therefore should be denied. This is because EKPC and its Owner-Members based their COGEN/SPP tariff rates on incremental costs premised on the sale of QF output, which is not allowed under the Commission's regulation. In accordance with 807 KAR 5:054, Section 1(1), EKPC's COGEN/SPP tariff rates should reflect the incremental costs for the purchase or generation of energy or capacity that EKPC would have incurred but for the purchase of from the QF.

For the reasons discussed below, the Commission finds that the COGEN/SPP rates set forth below are fair, just and reasonable, and are based upon avoided costs as defined in 807 KAR 5:054, Section 1(1).

[6] Tariff Application at 4–5. Note that the proposed rate schedules are mirrored in each of the 16 Owner-Member's proposed tariffs.

Capacity Rates

EKPC stated that a market-clearing price is most appropriate for avoided capacity rates and that it used the PJM third incremental auction (IA) clearing price as the appropriate basis for the avoided capacity rate.[7] The difference between EKPC's use of the IA market clearing price and that of the Base Residual Auction (BRA) clearing price is that the capacity, through the IA, is put into the market immediately while capacity through the BRA is for a future delivery year, ordinarily three years away.[8]

In the Commission's January 13, 2021 Order in Case No. 2020-00174, it found that in lieu of an appropriate generation proxy unit cost alternative, the net Cost of New Energy (CONE) as set by PJM should be the cost of avoided capacity for Kentucky Power Company (Kentucky Power).[9] The Commission found as such primarily because Kentucky Power is both a vertically integrated utility and participates in PJM through the Fixed Resource Requirement construct.[10] Additionally, neither this Commission, nor the Commonwealth of Kentucky, has turned over resource adequacy to an RTO as other

[7] See EKPC's Response to Staff's First Request for Information (filed June 29, 2021) (Staff's First Request), Item 4a and Formal Conference Video Transcript (VT) at 4:07:20–4:07:31.

[8] VT at 4:11:59–4:12:31.

[9] Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Jan 13, 2021), Order at 96–101.

[10] This Commission has no interest in allowing our regulated, vertically-integrated utilities to effectively depend on the market for generation or capacity for any sustained period of time. Thus, should a capacity deficit occur, or is anticipated to occur, it is the replacement capacity cost of the next unit built, or the cost of firm bilateral capacity that should form the basis for avoided capacity values, not a market clearing price. If the Commission does not expect to allow a utility to depend on market-purchases for its long-term capacity needs, it follows that market capacity is not the cost the utility is avoiding. Rather, the likelihood is that the utility will replace generation capacity with "steel in the ground" or a Purchase Power Agreement. Therefore, the Commission places a greater emphasis on calculating avoided generation capacity cost, and thus value, on a proxy unit calculation.

jurisdictions within the PJM footprint have. When asked by Commission Staff to provide revisions similar to Kentucky Power's to its COGEN/SPP tariffs, EKPC replied that the energy rates would be as originally filed in this case while the capacity rates per kW-month would be the same as Kentucky Power's capacity rates over the projected time periods, as both EKPC and Kentucky Power reference the Area 3 Combustion Turbine CONE.[11] However, EKPC explained that net CONE is not market based and is inappropriate for use in an avoided capacity calculation. EKPC argued that net CONE is administratively determined and used in establishing the Variable Resource Requirement (VRR) curve. Capacity prices are established in the capacity auctions through the interaction of offered supply and modeled demand along the VRR curve.[12] As a load serving entity in PJM, EKPC is required to offer in all its generation resources and pay the resulting market clearing price to purchase its administratively-determined demand back.[13]

EKPC argued further that the use of net CONE was inappropriate and that notion incorrectly assumed that it could avoid the cost of a new combustion turbine (CT) by purchasing capacity from a third party cogenerator or small power producer.[14] EKPC argued that in its most recent integrated resource plan (IRP) in Case No. 2019-00096,[15] and reiterated at the September 10, 2021 Formal Conference, that it had no need for

[11] EKPC's Response to Staff's First Request, Item 4b.

[12] *Id.*, Item 4a.

[13] *Id.*

[14] *Id.*, Item 4b.

[15] See Case No. 2019-00096, *Electronic 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc*. (filed Apr. 1, 2019).

additional capacity in the next five years and that the use of net CONE as the avoided capacity rate would force it to purchase unneeded capacity.[16] The capacity rate would set a minimum price floor for capacity that may not have an equivalent value, which would over compensate or subsidize cogenerators and unnecessarily raise rates to its Member Owners.[17]

When questioned about what the appropriate replacement unit would be if EKPC were to retire a unit, EKPC explained that the size of the unit fulfilling the capacity need was important for an appropriate comparison.[18] If the IRP indicated that a large unit would be replaced or additional capacity needed, EKPC would run multiple scenarios as demonstrated through its IRP and submit an application to the Commission for review and approval of a certificate of public convenience and necessity.[19] EKPC argued that this scenario is different than EKPC purchasing small amounts of capacity through its COGEN/SPP tariff from small cogenerators and small power producers. EKPC argued that before the advent of a capacity market, a generation unit's capacity would be replaced with a similar unit, but with the capacity market, EKPC can replace small amounts of capacity with market purchases, only paying the clearing price of that capacity; therefore, the capacity clearing price is the proxy unit price.[20] EKPC explained further that one of the benefits of the market is that it can lean on it when generation is

[16] EKPC's Response to Staff's First Request, Item 4b and VT at 3:05:19–3:05:32.

[17] EKPC's Response to Staff's First Request, Item 4b and VT at 3:05:19–3:05:32 and 04:02:45–04:04:05. In addition, EKPC stated that cogenerators in PJM but outside of EKPC's footprint could take advantage of its Tariff. VT at 3:16:22–3:17:55.

[18] VT at 3:37:23–3:38:45 and 3:39:25–3:39:38.

[19] VT at 3:32:37–3:33:46 and 3:47:54–3:49:41.

[20] VT at 3:39:23–3:40:14.

needed and that it was consistent in using the market as a hurdle for when it was justifying any new resource whether it be units such as the Bluegrass Station, or energy efficiency and demand side management programs.[21] Finally, EKPC explained that it should only be paying a comparable price for renewables, while using net CONE would translate into about $50 per MWh for capacity in addition to an average peak LMP of $25 per MWh, which would push the overall tariff price much higher than recent utility scale solar developer offer prices. EKPC argued that net CONE is not an appropriate price for the type of resource that would take advantage of the tariff.[22] The most recent 2022-2023 BRA clearing price is $50 per MW day.[23] EKPC stated that if it were to pay the current BRA clearing price and the LMP, its customers would be largely indifferent to whether the capacity purchase came from a PURPA unit or QF or from the market, and therefore, the BRA results would be a more reasonable price than net CONE.[24]

The Commission agrees with EKPC insofar as it attempts to differentiate itself from FRR construct members of PJM by virtue of its participation in the PJM BRAs. However, many of the arguments made by EKPC are simply contrary to the Commission or utility's practice, or contrary to EKPC's own tariff. For instance, EKPC argues that since the capacity payments paid to generation that is dissimilar to the type that may be replaced, such as having to pay solar QFs the avoided capacity value for a retiring coal plant, customers may be overpaying for resources they won't receive full value from. First,

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[21] VT at 3:42:45–3:46:18.

[22] VT at 4:13:30–4:16:05.

[23] See EKPC's Response to Staff's Second Request for Information, Item 1.

[24] VT at 4:17:08–4:18:07.

EKPC's argument in this regard seems to be more about a disagreement with PURPA generally, and less specific to its obligations under the law. Further, EKPC's own tariffs do not provide for non-dispatchable resources, as defined therein, to even receive capacity payments. As such, arguments on this issue are a red herring, and distract from the important issue of providing power to customers at the most reasonable least cost, not merely in the manner EKPC prefers to provide this service. Further, use of incremental auctions to determine EKPC's avoided capacity cost, and thus value, is also inappropriate, as EKPC notes that that auction is not where the utility purchases back its entire load. As such, until next year's COGEN/SPP tariff filing update, the Commission finds that the use of the most recent BRA capacity market clearing price is more appropriate and should be used as the proxy for the avoided capacity cost component of the COGEN/SPP tariffs.

However, in future filings, the Commission expects EKPC to develop a robust record upon which avoided costs can be calculated. In those future filings, EKPC should provide the most recent BRA results and the actual cost for a unit of physical capacity, both if the capacity was purchased or built.[25] Additionally, in those future filings EKPC should include robust information on the use of ELCC or like-kind calculations to determine the capacity contribution of non-dispatchable resources. The Commission believes it is patently contrary to the weighty evidence provided to it over numerous matters to assert that non-dispatchable resources provide no contribution to capacity, and therefore, should be compensated $0 for capacity. Maintaining such a position is also

[25] For more on the reason for this requirement, refer to footnote 10, above.

contrary to the rules applied to the PJM capacity market that EKPC seeks this Commission to adopt prices from.

Energy Rates

When asked what the energy rates would be if similar revisions were made to its tariff as were Ordered in Case No. 2019-00174, EKPC stated that it estimates the hourly variable locational marginal price (LMP) rates at the ADHub for its energy costs going forward and that these would be the same as originally filed in this case.[26] EKPC stated that it would be indifferent as to whether its purchased energy came from the market or from QFs.[27] In addition, it agreed that the use of actual real time LMPs in its tariff would be acceptable.[28]

The Commission finds that EKPC should use the real-time LMP at the time of the delivery as the energy rates in its COGEN/SPP tariffs, for all types of resources. This methodology reflects the real-time cost that EKPC would otherwise purchase energy for, and thus complies with the relevant legal requirements.

Administrative Market Participation Fee

EKPC provided support for the rate reduction in its tariff filing in Exhibit 05[29] and explained that it had reviewed the services that ACES Power Marketing (ACES) provides to it and that as a result it had reevaluated what services were directly related to power

[26] EKPC's Response to Staff's First Request, Item 4a and 4b.

[27] VT at 3:30:03–3:30:18.

[28] EKPC's Response to Staff's First Request, Item 4a.

[29] See Exhibit 05-Supporting_Data_-_COGEN-SPP_Market_participation _cost_-_15MAR21.xlsx filed March 22, 2021.

supply resources. EKPC listed the services provided by ACES and determined 40 percent of those were relevant to a cogenerator or small power producer.[30]

The Commission finds that EKPC's explanation of the reduction to its administration fee is reasonable and should be accepted.

IT IS THEREFORE ORDERED that:

1. The COGEN/SPP tariff rates proposed by EKPC and its Owner-Members is denied.

2. The rates and charges for EKPC's and its Owner-Members' COGEN/SPP tariffs, as set forth in the Appendix to this Order, are fair, just and reasonable rates, and these rates are approved for service rendered on and after November 1, 2021.

3. Within 20 days of the date of this Order, EKPC and its Owner-Members shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates and charges approved by this Order and reflecting their effective date and that they were authorized by this Order.

4. This case is closed and removed from the Commission's docket.

[30] EKPC's Response to Staff's First Request, Item 3a. The relevant services include Credit Analysis and Counterparty Monitoring, Credit Exposure Monitoring and Management, Contract Monitoring-Agreements, Trade Capture Validation, Policy Compliance Monitoring, Portfolio Strategy and Analysis, Standard Portfolio Modeling and Risk Analysis, Portfolio Performance Reporting, Capacity Services, Financial Transmission Right Evaluations and Hedge Execution, and Bilateral Power and Transmission Settlements.

By the Commission

ENTERED

OCT 26 2021

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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2021-00198 DATED OCT 26 2021

The following rates and charges are prescribed for the customers in the area served by East Kentucky Power Cooperative, Inc. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of the Commission prior to the effective date of this Order.

COGENERATION AND SMALL POWER PRODUCTION POWER PURCHASE RATE SCHEDULES

OVER 100 kW FROM DISPATCHABLE GENERATION SOURCES

Capacity – $19.13 per kW per year is applicable if cogenerator or small power producer is dispatched by EKPC.

Energy – QF will be credited monthly for the electric power produced by dispatchable generation facilities at the actual real-time locational marginal price for energy set by PJM at the EKPC zonal node during each hour of the day at the time of the delivery. The payments will be offset by a market administration fee of $0.00016 per kWh to cover EKPC's market participation costs

EQUAL TO OR LESS THAN 100 kW FROM DISPATCHABLE GENERATION SOURCES

Capacity – $19.13 per kW per year is applicable if cogenerator or small power producer is dispatched by EKPC.

Energy – QF will be credited monthly for the electric power produced by dispatchable generation facilities at the actual real-time locational marginal price for energy set by PJM at the EKPC zonal node during each hour of the day at the time of the delivery. The payments will be offset by a market administration fee of $0.00016 per kWh to cover EKPC's market participation costs.

OVER 100 kW FROM NON-DISPATCHABLE GENERATION SOURCES

Rates – QF will be credited monthly for the electric power produced by non-dispatchable generation facilities at the value of the real-time locational marginal price for energy set by PJM at the EKPC zonal node during each hour of the day at the time of delivery. The payments will be offset by a market administration fee of $0.00016 per kWh to cover EKPC's market participation costs.

100 kW OR LESS FROM NON-DISPATCHABLE GENERATION SOURCES

Rates – QF will be credited monthly for the electric power produced by non-dispatchable generation facilities at the value of the real-time locational marginal price for energy set by PJM at the EKPC zonal node during each hour of the day at the time of delivery. The payments will be offset by a market administration fee of $0.00016 per kWh to cover EKPC's market participation costs.

*Alan Q. Zaring
Attorney at Law
Zaring & Sullivan Law Office, PSC
P.O. Box 226
New Castle, KENTUCKY 40050

*Clayton O Oswald
Taylor, Keller & Oswald, PLLC
1306 West Fifth Street, Suite 100
Post Office Box 3440
London, KENTUCKY 40743-3440

*Fleming-Mason Energy Cooperative, In
Fleming-Mason Energy Cooperative, Inc.
1449 Elizaville Road
P. O. Box 328
Flemingsburg, KY 41041

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*John J Scott
Attorney at Law
John J. Scott, P.S.C.
200 Logan Avenue
P.O. Box 389
Elizabethtown, KENTUCKY 42702-038

*Big Sandy R.E.C.C.
504 11th Street
Paintsville, KY 41240

*J. Hadden Dean
Sheehan Barnett Dean Pennington Little & Dexter
116 North Third Street
P.O. Box 1517
Danville, KENTUCKY 40423

*Nolin R.E.C.C.
411 Ring Road
Elizabethtown, KY 42701-6767

*Big Sandy R.E.C.C.
Big Sandy R.E.C.C.
504 11th Street
Paintsville, KY 41240

*Honorable Earl Rogers III
Attorney at Law
Campbell & Rogers
154 Flemingsburg Road
Morehead, KENTUCKY 40351

*Nolin R.E.C.C.
Nolin R.E.C.C.
411 Ring Road
Elizabethtown, KY 42701-6767

*Barry L Myers
Manager
Taylor County R.E.C.C.
625 West Main Street
P. O. Box 100
Campbellsville, KY 42719

*Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298

*South Kentucky R.E.C.C.
200 Electric Avenue
Somerset, KY 42501

*Taylor County R.E.C.C.
625 West Main Street
P. O. Box 100
Campbellsville, KY 42719

*Farmers R.E.C.C.
Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298

*South Kentucky R.E.C.C.
South Kentucky R.E.C.C.
200 Electric Avenue
Somerset, KY 42501

*Taylor County R.E.C.C.
Taylor County R.E.C.C.
625 West Main Street
P. O. Box 100
Campbellsville, KY 42719

*Fleming-Mason Energy Cooperative, Inc.
1449 Elizaville Road
P. O. Box 328
Flemingsburg, KY 41041

*Blue Grass Energy Cooperative Corp.
1201 Lexington Road
P. O. Box 990
Nicholasville, KY 40340-0990

*Clark Energy Cooperative, Inc.
2640 Ironworks Road
P. O. Box 748
Winchester, KY 40392-0748

*Clark Energy Cooperative, Inc.
Clark Energy Cooperative, Inc.
2640 Ironworks Road
P. O. Box 748
Winchester, KY 40392-0748

*Cumberland Valley Electric, Inc.
Highway 25E
P. O. Box 440
Gray, KY 40734

*Cumberland Valley Electric, Inc.
Cumberland Valley Electric, Inc.
Highway 25E
P. O. Box 440
Gray, KY 40734

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*Inter-County Energy Cooperative Corporation
1009 Hustonville Road
P. O. Box 87
Danville, KY 40423-0087

*Inter-County Energy Cooperative Corp
Inter-County Energy Cooperative Corporation
1009 Hustonville Road
P. O. Box 87
Danville, KY 40423-0087

*Jackson Energy Cooperative Corporation
115 Jackson Energy Lane
McKee, KY 40447

*Jackson Energy Cooperative Corporati
Jackson Energy Cooperative Corporation
115 Jackson Energy Lane
McKee, KY 40447

*Licking Valley R.E.C.C.
P. O. Box 605
271 Main Street
West Liberty, KY 41472

*Licking Valley R.E.C.C.
Licking Valley R.E.C.C.
P. O. Box 605
271 Main Street
West Liberty, KY 41472

*Owen Electric Cooperative, Inc.
8205 Highway 127 North
P. O. Box 400
Owenton, KY 40359

*Owen Electric Cooperative, Inc.
Owen Electric Cooperative, Inc.
8205 Highway 127 North
P. O. Box 400
Owenton, KY 40359

*Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

*Shelby Energy Cooperative, Inc.
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

*Salt River Electric Cooperative Corp.
111 West Brashear Avenue
P. O. Box 609
Bardstown, KY 40004

*Salt River Electric Cooperative Corp
Salt River Electric Cooperative Corp.
111 West Brashear Avenue
P. O. Box 609
Bardstown, KY 40004

*Grayson R.E.C.C.
109 Bagby Park
Grayson, KY 41143

*Grayson R.E.C.C.
Grayson R.E.C.C.
109 Bagby Park
Grayson, KY 41143

*Robert Spragens, Jr.
Spragens & Higdon, P.S.C.
15 Court Square
P.O. Box 681
Lebanon, KENTUCKY 40033