

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

In the Matter of:)
 BRUCE WILLIAM STANSBURY)
 COMPLAINANT)
)
 V.)
)
 SHELBY ENERGY COOPERATIVE, INC.)
 DEFENDANT)

CASE NO. 2008-00277

ANSWER TO AMENDED COMPLAINT

Comes SEC Cooperative, Inc., hereinafter "SEC", by counsel and for its Answer to the Amended Complaint states as follows:

1. SEC admits the allegations contained in paragraphs 1, 2, 3, 4 and 11 of the Amended Complaint.
2. SEC denies the allegations contained in paragraphs 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19, including all allegations contained in the original Complaint.
3. SEC denies any allegations not previously answered herein.
4. SEC makes the following detailed written responses to the complaints of Bruce William Stansbury ("Stansbury"). SEC has captioned these complaints into the following categories:
 - a. The fuel adjustment rate for July 2007;
 - b. The increase in the base energy rates effective August 1, 2008 not billed by SEC in a timely manner;
 - c. The revenue recognition of the increase in the base energy rates for energy sales from August 1, 2007 through December;
 - d. The collection or the billing of the additional revenue ;
 - e. Communication of the SEC's failure to bill the increase in base rates;

- f. SEC's continued financial stability and solvency in meeting its mortgage agreements with its lenders; and
- g. SEC's history of employee turnover and morale.

The fuel adjustment rate for July 2007:

Complaint:

SEC intentionally miscalculated its fuel adjustment clause in July 2007.

Response:

SEC did not intentionally miscalculate its fuel adjustment clause or rates at any time. An explanation of SEC's procedure in the calculation of the fuel adjustment rate will most certainly vindicate SEC of this false complaint.

SEC Cooperative has a two-month delay in the recovery of fuel adjustment charges that are billed by East Kentucky Power (EKP) each month on the power bill. SEC submits data monthly to the Public Service Commission (PSC) for review that reflects a reconciliation of the fuel adjustment charge for the current month whereby an over or under recovery is determined based on the fuel adjustment charge factor that was calculated two months prior. The over or under recovery for the current month is carried forward as a debit or credit to the calculation of the fuel adjustment charge factor that will be applied to bills rendered two months into the future. Based on this perpetual inclusion of the over or under recovery for each month's calculation of the fuel adjustment charge factor, SEC does not benefit unwarranted from the calculation.

The fuel adjustment charge factor that applied to July, 2007 billings for SEC's members was calculated using the May, 2007 kWh sales for SEC members along with kWh purchased and fuel adjustment charges from EKP's power bill for May, 2007. The fuel adjustment charges for EKP in the month of May were the highest charged by EKP for the twelve months of 2007. This higher fuel adjustment charges from EKP translates into a higher fuel adjustment factor for SEC's members in July as it did with most cooperatives served by EKP.

Review of our records for the monthly preparation of the fuel adjustment charge submitted to the PSC for the applied month of July, shows the correct data from the appropriate EKP power bill and SEC's kWh sales report was used to perform the calculation and there was no improper or miscalculation of the factor. The resulting factor of .02085 calculated on the

May, 2007 data and issued to the PSC on June 25, 2007 was applied to July energy bills as was appropriate.

The fuel adjustment charges for July, 2007 were not determined or defined by the approval of PSC Case No. 2006-00524. The fuel adjustment charge was much higher in July, 2007 which was determined by the pass-through of higher fuel adjustment charges directly from EKP for the month of May, 2007.

There was no improper pass-through of the fuel adjustment charge or action taken to benefit SEC by improperly inflating profits for the month of July as explained in the first paragraph.

SEC passed through the correct fuel adjustment charge for July, 2007 as explained in the first paragraph and has not collected any fuel adjustment charges in violation of Kentucky law.

The increase in the base energy rates effective August 1, 2008 not billed by SEC in a timely manner;

Complaint:

SEC failed to bill the increase in base energy rates for August through December which resulted in potential harm to the consumers

Response:

Upon receipt of an order dated July 25, 2007 for Case No. 2006-0524, SEC failed to transfer the base fuel cost increase from EKP of .00635 that was effective August 1, 2007 and approved by PSC resulting from Case No. 2006-0487, Application of SEC Cooperative, Inc. to Pass-Through an Increase of Its Wholesale Power Supplier Pursuant to KRS 278.455(2). This resulted in SEC's energy rates being lower than approved by the PSC and SEC's members being under-billed for energy from August 15, 2007 through December 13, 2007. This error was directly related to energy charges and had no correlation to the fuel cost adjustment charges implemented by SEC for July 2007 or other months.

SEC has operated in a financially sound manner since its inception through the present, and will continue to do so into the future. SEC has maintained a TIER above the required 1.25

for the last five years and met financial requirements in the past and plans to do so in the future. As with many other utilities, it may be necessary in the near future to implement a rate increase to maintain margins due to increased costs throughout our industry. SEC hasn't had a rate increase other than pass-through EKP wholesale increases since 1983. We operate an efficient organization with the best interest of our members in mind, and SEC is in no danger of "losing preferred tier profitability".

SEC contacted the PSC in December, 2007 when they became aware of the under-billed revenue error and put together a plan that was approved by the PSC to correct the under-billed revenue. It was determined that the kWh for each month under-billed would be calculated on the base rate factor by which the tariffs were accidentally not increased at SEC and multiplied by the applicable environmental surcharge rate for that month. Beginning with August 15, 2007 through December 13, 2007, this under-billed revenue would be included respectively for the months of February 14, 2008 through June 16, 2008 and applicable taxes would apply at that time. Testing showed this billed the proper amount with a variance of one or two cents based on rounding during billing calculations.

The revenue recognition of the increase in the base energy rates for energy sales from August 1, 2007;

Complaint:

SEC did improperly and retroactively account for the under-billed adjustment.

Response:

The under-billed energy revenue was properly credited in the accounting year of 2007 so the energy revenues would match the purchased power expenses within the year they actually occurred. The amount of under-billed revenue was estimated and recorded as a receivable in 2007. When the amounts were billed in 2008, the 2007 receivable was reduced by the amount of each billing. The only additional revenue recorded in 2008 was \$79,720.62, which was the amount by which the 2008 actual billings exceeded the 2007 estimated and recorded receivable. This action was taken pursuant to the advice of SEC's CPA to ensure it complied with generally accepted practices. Contrary to Stansbury's assertions, if this had not occurred, the actual financial picture for both 2007 and 2008 would have been incorrect. This would have violated federal law.

The collection or the billing of the additional revenue;

Complaint:

SEC counted under-billed proceeds twice resulting in double-counting income and overstating profits. SEC collected more from the under-billed fuel adjustment costs from February through June 2008 than SEC lost from August through December 2007.

Response:

SEC did not collect under-billed fuel adjustment costs from February 2008 through June 2008. SEC collected energy revenue that was under-billed as explained above. SEC has not collected from its members more than the amount due from the under-billed revenue.

Communication of the SEC's failure to bill the increase in base rates;

Complaint:

SEC did not communicate clearly the under-billed adjustment and took steps to prevent customers from exercising their legal rights.

Response:

SEC notified each member of the incorrect billing for the above periods by mail which was included as an insert with the energy bill. A sample of the notice is attached (Exhibit 1).

In reference to Exhibit D of the complaint, the content of the e-mail is being taken out of the context and purpose for which it was sent to the consumer accounting representatives. Before the February, 2008 bills went out, SEC's billing manager discussed the billing error and how it occurred with the consumer accounting representatives whom she supervises. She explained our employees were to offer our members an apology for creating the error, provide as much detail as needed for an explanation, answer any questions that were asked, and offer options for payment with the understanding that we try to satisfy and resolve any concerns before directing a member to the PSC. A few weeks after the billing correction began, she observed that the level of communication had deteriorated on behalf of the SEC representatives and she overheard members being told "the PSC approved the correction and if you have any questions, you should contact PSC directly". The billing manager discussed this situation with President and CEO Debbie Martin, and shared her concern that some of our representatives may not be giving the explanation and consideration needed to our members, which in turn

might generate unnecessary member calls to PSC and unnecessary burden upon PSC employees. She explained that from that point on (the sending of the email in question), she intended to have the calls concerning the billing correction directed to her or her backup employee. The billing manager felt she and her backup could better explain the situation since they were directly involved in formulating the member notification plan and in fact handled the details of the correction.

It is the cooperative's desire to resolve as many inquiries as possible for our members. As with our day to day work, if we are unable to satisfy or resolve an issue to the member's satisfaction, we provide the PSC contact number. At no time during the resolution of this error or during the normal course of business has SEC taken any action or affirmative steps to prevent our members from contacting PSC.

SEC's continued financial stability and solvency in meeting its mortgage agreements with its lenders:

Complaint:

SEC's mismanagement has financially damaged customers and impaired SEC's credit rating and ability to borrow money.

Response:

The members of SEC have suffered no financial damage due to the billing correction. Each member was billed over a period of time to recoup the under-billed revenue to match the same length of time over which the error occurred. The utility costs for energy during the correcting months were no more than utility costs for energy during the initial billing months for any member. We shared with members that we were willing to work with them if special payment arrangements were needed to assist them with paying their bills.

As stated above, SEC has operated in a sound financial condition for many years and continues to do so. There has been no impairment to the financial rating of SEC nor have there been improper filings or misrepresentations on behalf of SEC to the Rural Utilities Service or other lending agencies. To the contrary, the billing error and subsequent corrective actions were disclosed to RUS contact Mike Norman. SEC has met all of its financial ratios dealing with the Times Interest Earned Ratio ("TIER") and the Debt Service Coverage ("DSC") for the last several years.

SEC's history of employee turnover and morale

Complaint:

Employee turnover has created billing problems, increased training needs, operations and maintenance costs, and the increased potential harm to employees.

Response:

As with any organization, SEC has had employees leave our organization but not to the extent that it could be considered a large turn-over. SEC, as with any organization, has had errors but nothing that was intentional or negligent on behalf of SEC's employees. We have excellent employees who take pride in their work and strive to serve our members as best possible. It's unfortunate that we had this billing error and we regret the inconvenience to our members. We have taken steps to avoid any such situation taking place in the future.

We are confident there is nothing to support or substantiate the claim of an increased cost in training, operation and restoration of service or the potential harm to our employees. Our employees have safety rules and procedures that support safe work practices. They are empowered to take action if a situation is considered unsafe and we encourage this action by all employees. We expect employees to honor the instructions and guidelines provided to keep themselves, co-workers and the public safe at all times.

We support training, education and self improvement among our employees. As a portion of our cooperative workforce continues toward retirement, we're working toward better training of our employees for the future service of our members. We have well trained employees with numerous years of experience that share their knowledge and expertise with those still within a learning curve and those who are working to be the future leaders of the cooperative.

A final comment is in reference to the original complaint, Exhibit A – Item C, which involved an allegation that the former CEO was continuing to be paid. The previous CEO has over the past year and a half and almost entirely without compensation, provided management and engineering consultation upon many occasions as deemed necessary by the current CEO. This was approved and encouraged by the board of directors of SEC as acceptable at the time of the previous CEO's retirement due to his years with the cooperative and his expertise as a

professional engineer. Since his retirement, he has invoiced the cooperative only once during that time for numerous telephone calls, advice and overall discussion. He is not "continuing to be paid."

5. The Complaint and Amended Complaint were filed by a former embittered employee of SEC solely for the purpose of embarrassing and harassing SEC and SEC's employees. The original Complaint contained highly personal and embarrassing information about other dedicated and hard-working employees. The unprovoked and inexcusable attempted disclosure of these private matters is evidence of Stansbury's insensitivity to the feelings and rights of those other employees.

6. SEC has already agreed to a limited management audit in Case No. 2008-00069, which renders moot Stansbury's call for a management audit. We are certain the Commission Staff will seek to investigate any other areas of operation which require improvement.

WHEREFORE, SEC respectfully requests the following relief:

1. That the Commission dismiss the Complaint and the Amended Complaint in its entirety because it has no validity whatsoever and is a needless waste of the resources of the Commission and SEC.

2. That the Commission deny Stansbury's request for a complete management audit because it is completely unjustified.

3. That pursuant to SEC's prior motion filed herein, the Commission permanently seal the confidential records improperly obtained by Stansbury and filed in this action without authorization.

4. Any and all other relief to which it may be entitled.

Respectfully submitted,
MATHIS, RIGGS & PRATHER, P.S.C.

By: _____

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing was this 5th day of September, 2008 mailed postage pre-paid to the following:

Vanessa B. Cantley, Esq.
Bahe, Cook, Cantley & Jones, PLC
Kentucky Home Life Bldg., Ste. 700
293 South Fifth Street
Louisville, KY 40202

A handwritten signature in black ink, appearing to read "Don Prather", written over a horizontal line.

Donald T. Prather

dtp/sec/psc/stansbury/Answer to Amended Complaint

IMPORTANT INFORMATION

Dear Member:

Effective August 1, 2007, the Kentucky Public Service Commission approved the roll-in of \$.00635 per kilowatt-hour to the base rates of Shelby Energy Cooperative for applicable fuel costs evaluated for a two-year period ending October 31, 2006. We failed to update the base rates and monthly bills were processed from August 15, 2007 through December 13, 2007 at an incorrect rate for each kilowatt-hour of energy used by our members.

Energy statements beginning February 14, 2008 through June 16, 2008, will show a line item correction titled "Base Rate Correction - *Month/Year*" for the under-billed amount. For the kilowatt-hours billed each month from August through December, 2007, a correction will reflect respectively on your monthly energy bill from February through June, 2008.

We apologize for this error and the incorrect billing for your electric service during this period. Should you have any questions or need additional information, please contact our office.