

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLIAM AND CHARLENE WILKINSON)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2025-00005
TAYLOR COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

ORDER

On January 8, 2025, William and Charlene Wilkinson (Complainants) tendered a formal complaint with the Commission against Taylor County Rural Electric Cooperative Corporation (Taylor RECC) concerning Taylor RECC's alleged failure to distribute capital credits after Mr. and Mrs. Wilkinson moved out of the service territory in January 2000. The Commission finds that a *prima facie* case has not been established concerning Taylor RECC's alleged violation of Tariff Sheet 38,¹ and thus the complaint should be dismissed.

LEGAL STANDARD

Pursuant to KRS 278.260, the Commission has jurisdiction over complaints regarding rates or service.² Commission regulation 807 KAR 5:001, Section 20(1)(c) requires each complaint to state fully, clearly and with reasonable certainty, the act or

¹ P.S.C Ky. No. 5, Sheet No. 38, (issued Apr. 9, 2021), effective Oct. 28, 1992. The page addressing capital credits.

² KRS 278.206.

omission, of which failure to comply is alleged.³ Furthermore, 807 KAR 5:001, Section 20(4)(a), requires the Commission to examine the complaint to ascertain if the complaint establishes a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief.⁴ A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case, it may be dismissed.

BACKGROUND

On January 8, 2025, Mr. and Mrs. Wilkinson tendered a formal complaint to the Commission. Mrs. Wilkinson stated that, while attempting to settle her mother's account after she passed on May 26, 2024, Taylor RECC did not release her mother's capital credits until the second week of December 2024.⁵ During this seven-month period, Mrs. Wilkinson began to research Taylor RECC's Tariff Sheet 38 addressing capital credits retirement,⁶ and concluded that she and her husband should have received capital credits when they moved off the line in January 2000. Mr. and Mrs. Wilkinson requested the capital credits, with interest accrued since January 2000, be sent to their Biloxi, Mississippi address.

³ 807 KAR 5:001, Section 20(1)(c).

⁴ 807 KAR 5:001, Section 20(4)(a).

⁵ Complaint (filed Jan. 8, 2025) at 3.

⁶ Taylor RECC's Tariff P.S.C. Ky. No. 5, Sheet 38, effective Oct. 28, 1992.

On January 15, 2025, Taylor RECC filed a response to the complaint, which included the attachment of Taylor RECC Tariff Sheet 38, explaining that beginning in 1955 all capital credits were paid to a deceased member's estate upon request.⁷

On March 19, 2025, the Commission entered an Order rejecting Mr. and Mrs. Wilkinson's complaint for filing for failing to state a *prima facie* case, and directed that the Wilkinson's should have 20 days to file an amended complaint.⁸

In response to the Commission's Order, on March 27, 2025, Mr. and Mrs. Wilkinson tendered a Taylor RECC Membership Certificate issued on April 6, 1995.⁹

DISCUSSION AND FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the complaint fails to establish a *prima facie* case. Although the Commission has jurisdiction over complaints, it must determine if a utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief. While on its face, Taylor RECC's Tariff Sheet 38 could be more clear, Taylor RECC's interpretation and administration of its tariff provisions is not unreasonable and, as discussed below, is consistent with its by-laws. Thus, the Commission is unable to provide Complainants relief by ordering Taylor RECC to distribute the requested capital credits with interest accrued since January 2000.

Taylor RECC's by-laws outline three situations in which the Board of Directors, acting under policies of general application, will retire capital credits to members of the

⁷ Order (Ky. PSC Jan. 15, 2025), Taylor RECC's Response to Complaint (filed Jan. 15, 2025).

⁸ Order (Ky. PSC Mar. 19, 2025).

⁹ William and Charlene Wilkinson Response to Commission Order (filed Mar. 27, 2025).

Cooperative. The by-laws are attached as an Appendix to this Order. Taylor RECC may retire capitol credits: (1) In the event of dissolution or liquidation of the Cooperative after all outstanding indebtedness has been paid;¹⁰ (2) At any time prior to dissolution or liquidation if the Board of Directors determines that the financial condition of the Cooperative will not be impaired;¹¹ and (3) At any time upon the death of any member, provided that the financial condition of the Cooperative will not be impaired.¹²

While the Commission encourages Taylor RECC to review the tariff on this matter to determine if its capitol credit program should be clarified, Complainants have not presented the Commission with *prima facie* evidence that Taylor RECC has violated Tariff Sheet 38. Upon review of the certificate filed by the Complainants, the certificate indicates that membership is not transferable except as provided in the by-laws of the Cooperative, membership may be terminated as provided in said by-laws, and upon termination of the membership by death, cessation of existence, expulsion or withdrawal, the certificate shall be surrendered to the Cooperative.¹³ In addition, the certificate and membership are subject to all terms, conditions and limitations contained in the Article of Incorporation and by-laws of the Cooperative.¹⁴

¹⁰ Case No. 2023-00147, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for an Adjustment of Rates* (filed July 19, 2023), Response to Office of Attorney General First Request for Information, Item 13, at 78.

¹¹ Case No. 2023-00147, July 19, 2023 Response to Office of Attorney General First Request for Information, Item 13, at 78.

¹² Case No. 2023-00147, July 19, 2023 Response to Office of Attorney General First Request for Information, Item 13, at 79.

¹³ William and Charlene Wilkinson Response to Commission Order.

¹⁴ William and Charlene Wilkinson Response to Commission Order.

The information of record does not demonstrate that any one of the three situations in the by-laws initiating a capitol credit occurred as it relates to the Wilkinson's capital credits. Therefore, the Commission rejects the complaint for failing to state a *prima facie* case.

IT IS THEREFORE ORDERED that this proceeding is dismissed and shall be removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Linda Bridwell RP

Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2025-00005 DATED APR 17 2025

THREE PAGES TO FOLLOW

ARTICLE VIII - NON-PROFIT OPERATION

Section 1. Interest or Dividends on Capital Prohibited

The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons.

Section 2. Patronage Capital in Connection with Furnishing Electric Energy

In the furnishing of electric energy the Cooperative's operations shall be so conducted that all patrons, members and non-members alike, will through their patronage furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis the Cooperative is obligated to account on a patronage basis to all its patrons, members and non-members alike, for all amount received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs and expense at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons, members and non-members alike, as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each calendar year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to

the capital account of each patron, and the Cooperative may within a reasonable time after the close of the calendar year notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts for capital.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro-rate basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' account may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, and capital first received by the Cooperative being first retired. In no event, however, may any such capital be retired unless, after the proposed retirement, the Capital of the Cooperative shall equal at least forty per centum (40%) of the total assets of the Cooperative.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or a part of such patron's premises served by the Cooperative unless the Board of Directors, acting under policies

of general application, shall determine otherwise. In the event that a non-member patron shall elect to become a member of the Cooperative the capital credited to the account of such non-member patron may be applied by the Cooperative toward the payment of a membership fee on behalf of such non-member patron.

Notwithstanding any other provision of these bylaws, the Board of Directors, at its discretion, shall have the power at any time upon the death of any patron, if the legal representative of his estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these bylaws, to retire capital credited to any such patron immediately upon such terms and conditions as the Board of Directors acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Cooperative will not be impaired thereby.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the articles of incorporation and bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the bylaws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

William Wilkinson
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Biloxi, MS 39532

*Taylor County R.E.C.C.
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