COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF CLARK ENERGY COOPERATIVE, INC. FOR A GENERAL ADJUSTMENT OF RATES PURSUANT TO STREAMLINED PROCEDURE PILOT PROGRAM ESTABLISHED IN CASE NO. 2018-00407	))))))	Case No. 2020-00104

CLARK ENERGY COOPERATIVE, INC.'S
COMMENTS IN SUPPORT OF APPLICATION

Comes now Clark Energy Cooperative, Inc. ("Clark Energy"), by counsel, pursuant to the Commission's May 14, 2020 Procedural Order, and in further support of its Application requesting a general adjustment of its existing rates, respectfully offers the following comments:

Clark Energy is a not-for-profit, member-owned, rural electric distribution cooperative organized under KRS Chapter 279 that provides retail electric service to approximately 26,000 metered accounts in eleven counties.[1] Approximately seventy-six (76%) percent of Clark Energy's total energy usage is consumed by residential customers.[2] Using a historical, twelve-month test period ending on December 31, 2019, Clark Energy seeks approval to increase its annual revenues by $916,755.00, or 2.00%, to achieve a Times Interest Earned Ratio ("TIER") of 2.00, which equates to an Operating Times Interest Earned Ratio ("OTIER") of 1.77.[3] This

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[1] *See* Application, p. 1.

[2] *See* Holly S. Eades Testimony ("Eades Testimony"), p. 5 (May 1, 2020).

[3] *See* Application, p. 2. Using its pro forma test year, Clark Energy could justify a higher rate increase of up to $1,051,816 using a 1.85 Operating Tier ("OTIER"). *See* John Wolfram Direct Testimony ("Wolfram Direct"), p. 7 (May 1, 2020). Should the Commission choose to disallow any costs included within Clark Energy's test year, Clark

revenue requirement is proposed to be allocated by increasing the Rate R monthly Facility Charge from $12.43 per month to $18.00 per month and by decreasing the Energy Charge per kWh from $0.08832 to $0.08608.[4] For those customers on Rate D, the Energy Charge would increase from $0.05634 per kWh to $0.06264 per kWh.[5] The increase would result in a 2.65% increase for Rate R customers, an 11.84% for Rate D customers and a 0.0% increase for all other customer classes.[6] A Rate R customer using an average number of kWh a month would see their bill increase by $3.09 per month.[7] Each of these rate design proposals is consistent with the Cost of Service Study ("COSS") prepared by Mr. John Wolfram.[8]

This is the first requested increase in Clark Energy's base rates in ten years.[9] With an average annual growth rate in membership of 0.21% percent and a similarly flat increase in average energy sales,[10] ordinary inflationary pressures have continued to erode the cooperative's margins. In addition, increases in depreciation expense (over $1.59 million annually) and property taxes (over $240,000 annually) have also accounted for the decline in financial metrics.[11] Clark Energy has been able to offset many of these costs and delay a base rate increase through prudent management practices, however, Clark Energy's financial metrics are below what is necessary. Moreover, Clark Energy's existing rates do not align with its cost of providing service, which makes its margins more susceptible to volatility. Without an adjustment

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Energy respectfully requests the option to still award a 1.77 OTIER in order to still arrive at the overall 2.0% rate increase.

[4] *See* Wolfram Testimony, pp. 23-24.

[5] *See id.*

[6] *See* Application, Exhibit 10; Eades Testimony, p. 11; *See* Wolfram Testimony, p. 23.

[7] *See* Direct Testimony of Robert C. Brewer ("Brewer Testimony"), p. 9. (May 1, 2020).

[8] *See* Application, Exhibit JW-3 through JW-8.

[9] *See In the Matter of the Application of Clark Energy Cooperative, Inc. for an Adjustment of Rates*, Order, Case No. 2009-00314 (Ky. P.S.C. Apr. 16, 2010).

[10] *See* Brewer Testimony, p. 4.

[11] *See* Eades Testimony, p. 6.

of its rates, Clark Energy's undesirable and insufficient rate structure will continue, thereby placing at risk not only the cooperative's contractual relationships with its lenders, but also the safe and reliable service its members deserve and expect.

Clark Energy's management has done a tremendous job in managing costs. Indeed, the documented cost savings in this case exceed the amount of the proposed rate increase. Examples include:

- Implementing an Advanced Metering Infrastructure System (estimated to save $4 million in meter reading expense from 2000 through 2015, $210,000 in annual savings from remote connects/disconnects, plus other unquantifiable operational savings);[12]
- Reducing Clark Energy's labor force from 53 full-time employees and 3 part-time employees to 48 full-time employees and 1 part-time employee;[13]
- Switching from the health plan sponsored by the National Rural Electric Cooperative Association to a self-insured plan offered by Kentucky Rural Electric Cooperatives ("KREC") in 2011 (an approximate $134,000 annual savings);[14]
- Making a prepayment to the R&S Plan in 2013 that lowered future billing rates (saving an estimated $2.9 million between 2013 and 2028);[15]
- Lowering the R&S benefit level from 2.0 to 1.75 for new hires after December 2015 (saving approximately $66,112 in the test year);[16]

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[12] *See* Brewer Testimony, p. 6; Clark Energy's Response to AG-DR-01-001(a)-(b) and AG-DR-01-006.

[13] *See* Brewer Testimony, p. 6; Clark Energy's Response to AG-DR-01-012.

[14] *See* Brewer Testimony, p. 7.

[15] *See id.*; Clark Energy Response to Staff-DR-01-003(b).

- Removing cost of living adjustments from the R&S Plan in 2016 (approximately $70,000 in annual savings);[17]
- Eliminating post-retirement insurance coverage for employees hired on and after January 1, 2016[18] and switching current Medicare retirees' health insurance plans from KREC to a Humana plan that requires retirees to pay 10% of medical costs up to a maximum amount (saving $77,316 annually);[19]
- Requiring employees to be 55 years of age prior to claiming health insurance coverage as a retiree;[20]
- Increasing deductibles for health insurance;[21]
- Requiring all employees to make contributions towards monthly health insurance premiums (ranging from 10% to 27% based upon dependent coverage);[22]
- Refinancing approximately $8.4 million of debt owed to the Rural Utilities Service (saving $2.2 million during the term of two refinancing opportunities);[23]
- Implementing a GPS/Inventory Project that allows for more efficient coordination of system inspections, data collection and maintenance while increasing the accuracy of pole attachments (and associated revenue) and providing greater awareness of the distribution system;[24]

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[16] *See* Brewer Testimony, p. 7; Clark Energy Response to Staff-DR-01-003(c).

[17] *See* Brewer Testimony, pp. 7-8; Clark Energy Response to Staff-DR-01-003(a).

[18] *See* Brewer Testimony, p. 8.

[19] *See* Eades Testimony, p. 10; Clark Energy Response to Staff-DR-01-004(a).

[20] *See* Brewer Testimony, p. 8.

[21] *See id.*

[22] *See id.*; Eades Testimony, p. 9.

[23] *See* Eades Testimony, pp. 7-8.

[24] *See* Brewer Testimony, p. 8; Clark Energy Response to Staff-DR-01-004(b).

- Using contract labor more efficiently and effectively;[25]
- Cross-training employees to promote efficiency;[26]
- Making more use of in-house services for fleet management and maintenance;[27]
- Utilizing an independent, third-party consultant to provide insight and guidance as to what are fair wage scales;[28] and
- Retaining its skilled workforce by creating an incentive to remain with Clark Energy by contributing to the fixed-benefit retirement plan while allowing employees to participate in a 401(k) plan without a cooperative match.[29]

The practical result of these efforts is that Clark Energy's average residential customer paid approximately 57% more for an equivalent amount of electricity as did a neighboring customer of Kentucky Utilities Company ("KU") in 2009.[30] Now, however, Clark Energy's average residential customer enjoys a 5.5% discount when compared to a KU customer.[31]

While Clark Energy's relative competitiveness with regard to rates has improved over the past decade, its financial metrics have generally deteriorated. In 2014, Clark Energy's TIER was 4.24%, however, it fell to 2.33% in the test year.[32] The cooperative's OTIER fell from 2.36 to

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[25] *See* Brewer Testimony, p. 8.

[26] *See id.*

[27] *See id.*, pp. 8-9.

[28] *See* Eades Testimony, p. 10.

[29] *See id.*, p. 9; Clark Energy Response to Staff-DR-01-010.

[30] *See* Brewer Testimony, p. 9.

[31] *See id.*

[32] *See* Application, Exhibit 31. The test year calculation is adjusted to account for a one time back-billing payment received from AT&T.

1.43 and its DSC also decreased from 2.44 to 1.96 in the same period.[33] Clark Energy's financial metrics through April 30, 2020 are even worse.[34]

Increasing depreciation expense is a significant factor in driving Clark Energy's financial performance. In this case, Clark Energy is not proposing new depreciation rates and is using the same depreciation rates used in its last base rate case.[35] However, as one would expect, there have been significant investments in Clark Energy's system over the past decade. Clark Energy's utility plant grew from $104,513,462 as of December 31, 2010 to $136,216,175 as of December 31, 2019.[36] This includes investments pursuant to Clark's triennial Construction Work Plans ("CWPs") as well as other capital investments. The most recent CWP included construction for new services, line conversion and replacement, miscellaneous distribution equipment, AMI meter replacements and upgrading meters with remote service switch devices, security lights, and upgrading all substation areas to radio frequency capability.[37] The financial impact of the normalized depreciation expense was described in Mr. Wolfram's workpapers.[38]

Likewise, Clark Energy's expenditures on human capital have been reasonable and appropriate. Clark Energy's wages and salary scale is based upon the work of an independent, third-party expert who analyzes data at the local and regional data level for both utilities and non-utilities alike.[39] That analysis is then used in relation to employees' job performance and

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[33] *See* Application, Exhibit 31. The test year calculation is adjusted to account for a one time back-billing payment received from AT&T.

[34] *See* Clark Energy's Response to AG-DR-01-013 and AG-DR-01-014.

[35] *See* Application, Exhibit 29.

[36] *See* Clark Energy Response to Staff-DR-01-007.

[37] *See id.*

[38] *See* Wolfram Testimony, Exhibit JW-2, Schedule 1.07.

[39] *See* Clark Energy Response to Staff-DR-01-012, Confidential Exhibit.

relative experience to determine an appropriate level of compensation.[40] For instance, the cooperative decreased its contributions to employees' HRAs as the cooperative's financial metrics declined.[41] While the Attorney General paints a familiar picture in expressing skepticism with regard to Clark Energy's executive compensation, the record is clear that Clark Energy's CEO is compensated below the average amount of similar executives holding comparable positions of responsibility.[42] Likewise, the Attorney General's reliance upon the current COVID-19 pandemic as a basis to minimize prior years' compensation increases is misplaced. The compensation figures at issue in this matter are all from the test year or before, which predates the onset of the COVID-19 pandemic. Seeking to charge Clark Energy's Board with knowledge which it could not possibly have regarding an unprecedented global pandemic that had not yet occurred is both unfair and unreasonable. In light of the extensive list of savings identified above – *which has allowed Clark Energy to delay an increase in base rates for a full decade* – it is not unreasonable to think that prudent management would be rewarded over time through increased compensation. Clark Energy's executive compensation is not excessive, particularly when compared to others.

In preparing its rate proposal, it was apparent that a 1.85 TIER would yield a rate increase of $1,051,816.00 or 2.42%,[43] however, Clark Energy has voluntarily capped its request at 2.0%, which results in a proposed rate increase of $916,755.00 and a 1.77 TIER.[44] Consistent with the Commission's streamlined rate case guidelines and general ratemaking principles, Clark Energy made adjustments to the test year expense to account for: (1) the fuel adjustment clause; (2) the

[40] *See* Clark Energy's Response to Staff-DR-01-017.

[41] *See* Clark Energy's Response to Staff-DR-01-011.

[42] *See* Clark Energy's Response to Staff-DR-01-017(b).

[43] *See* Wolfram Testimony, p. 9.

[44] *See* Application, Exhibit 13; Wolfram Testimony, p. 9, Exhibit JW-2.

environmental surcharge; (3) rate case expense; (4) year-end customer normalization; (5) generation and transmission capital credits; (6) non-recurring items; (7) depreciation expense normalization; (8) advertising and donations; (9) Director's expenses; (10) interest expense; and (11) life insurance premiums.[45] The only additional adjustment recommended in the information requests to which Clark Energy agrees is an $800 adjustment related to certain Director's participation in the NRECA annual meeting.[46] The Attorney General's comments do not include any additional specific adjustment proposals.

In allocating the proposed rate increase, Clark Energy asked Mr. Wolfram to prepare a COSS using standardized procedures whereby: (1) costs were functionalized to the major functional groups; (2) costs were classified as energy-related, demand-related, or customer-related; and then (3) costs were allocated to the rate classes.[47] Mr. Wolfram's detailed analysis,[48] demonstrated that Clark Energy is not recovering its costs from the Rate R and Rate D customer classes while it is over-recovering its costs with regard to other customer classes. As explained by Mr. Wolfram: (1) the COSS demonstrates a need to increase the rates for Rate R and Rate D customers; and (2) the COSS supports a fixed monthly Facility Charge of $35.01 for Rate R while the current charge is only $12.43.[49]

Clark Energy's proposed rate increase and rate design are fair, just and reasonable. Clark Energy has reasonably delayed seeking an increase in its rates, but – as the Commission has

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[45] *See* Wolfram Testimony, pp. 9-10, Exhibit JW-2, Schedules 1.01 through 1.11.

[46] *See* Clark Energy's Response to AG-DR-01-029(d).

[47] *See* Wolfram Testimony, p. 14.

[48] The method supporting Mr. Wolfram's analysis is described in-depth in his testimony. *See* Wolfram Testimony, pp. 14-20.

[49] *See* Wolfram Testimony, p. 22.

suggested – it has not waited too long, such that its financial condition is in an abhorrent crisis.[50] Likewise, Clark Energy seeks to align its rates so that those customer classes which cause the cooperative to incur costs are the same customer classes that proportionally pay those costs.[51] While some inter-class subsidization continues, the proposed rate design reduces the amount of the subsidization in accordance with the Commission's preference towards gradualism.[52] Moreover, Clark Energy understands that its low-income customers typically consume more energy per month than other residential customers.[53] Thus, the increase in the Facilities Charge and corresponding decrease in the Energy Charge for the Rate R customers will actually help reduce the impact of the proposed rate increase on Clark Energy's low-income customers.[54]

While the Attorney General objects to the request to increase the Facility Charge to $18.00 per month, the fact remains that the COSS supports a Facility Charge of over $35.00.[55] The Attorney General's comments focus exclusively upon the fixed-cost Facility Charge and do not take into account the volumetric Energy Charge. Viewing one component of a customer's bill in isolation will always yield an incomplete picture of the true impact of rate design. In this case, the COSS makes it clear that Rate R and Rate D customer classes have negative rates of return, while every other customer class has a positive rate of return.[56] To the extent the Attorney General requests that the proposed rate increase be allocated to non-Rate R and Rate D customers, it would have the effect of causing small businesses, manufacturers and job creators

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[50] *See* Eades Testimony, p. 11.

[51] *See id.*

[52] *See* Wolfram Testimony, p. 24.

[53] *See* Clark Energy's Response to Staff-DR-01-026; Clark Energy's Response to AG-DR-01-017 and AG-DR-01-025.

[54] *See* Eades Testimony, p. 12; Clark Energy's Response to AG-DR-01-017.

[55] *See* Wolfram Testimony, p. 22.

[56] *See id.*, Exhibit JW-3.

to further subsidize residential customers. Moreover, the proposed increase closes only one-quarter of the gap between the existing rate and the cost-based rate, which is a gradualistic approach to this issue.[57] The proposal to increase the Facility Charge and lower the Energy Charge will reduce rate volatility in months when billing demands are high, but overall energy sales are low.[58] That is good for both Clark Energy and its members over the long-term. The proposal will *not* create a disincentive for customers to engage in energy conservation efforts.[59] Finally, Clark Energy notes that the Commission has approved even greater percentage increases in a cooperative's fixed charge on at least five prior occasions since Clark Energy's last rate increase, which tends to allay the Attorney General's concern that the proposed increase would be anomalous.[60]

The proposed increase in the Rate D (Time of Use Marketing Service) Energy Charge is also fair, just and reasonable given the substantial subsidy currently attributable to this rate class.[61] Even with the increase in the Energy Charge, Rate D customers will continue to be subsidized by other rate classes until such time as the technology to support the rate becomes obsolete or the Commission directs Clark Energy to terminate the service.[62]

As part of the discovery in this proceeding, there were questions concerning the relationship of Clark Energy to its subsidiary, Clark Energy Propone ("CEP"), and its former joint venture with East Kentucky Power Cooperative, Inc., Clark Energy Services Corporation ("CESC"). As explained in the Application and responses to information requests, CESC no

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[57] *See id.*, p. 24.

[58] *See* Clark Energy's Response to Staff-DR-01-002.

[59] *See* Clark Energy's Response to AG-DR-01-020.

[60] *See* Clark Energy's Response to AG-DR-01-033(b).

[61] *See* Wolfram Testimony, p. 25.

[62] *See* Clark Energy's Response to Staff-DR-01-015(e).

longer exists,[63] and no expenses of CEP were charged to Clark Energy during the test year.[64] To the contrary, any expenses incurred by Clark Energy on behalf of CEP were charged to the affiliate and were booked in Clark Energy's other electric revenues.[65] CEP was profitable in the test year,[66] which benefits Clark Energy and its members.

The Attorney General's final request is that the Commission hold the proposed rate increase in abeyance "until after the current pandemic has abated. A delay of approximately 6-12 months may be appropriate."[67] The position is offered without any legal support and, if adopted, could itself constitute a violation of KRS 278.190. Clark Energy is mindful of the timing of its rate case filing and of the fact that no increase is ever welcomed by customers. However, as the Commission has opined regularly, a cooperative has a duty to safeguard its financial integrity for the benefit of its members who are also its customers.[68] In this particular case, Clark Energy has chosen to forego revenue to which it would be entitled under a higher TIER in order to minimize

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[63] *See* Clark Energy's Response to AG-DR-01-026(c).

[64] *See* Clark Energy's Response to AG-DR-01-027.

[65] *See* Application, Exhibit 15.

[66] *See id.*

[67] *See* Attorney General's Comments, p. 6 (June 29, 2020).

[68] *See, e.g., In the Matter of the Application of South Kentucky Rural Elec. Coop. Corp. for A Certificate of Pub. Convenience & Necessity to Construct A New Headquarters Facility in Somerset, Kentucky*, Order, Case No. 2008-00371 (Ky. P.S.C. May 11, 2010) ("South Kentucky's board of directors owes a fiduciary duty to its customers to safeguard the financial and operational viability of the cooperative. This fiduciary duty is heightened given the fact that South Kentucky's customers are also the owners of the cooperative."); *In the Matter of the General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*, Order, Case No. 2006-00472, pp. 26-27 (Ky. P.S.C. Dec. 5, 2007):

> Unlike an investor-owned utility where the equity owners of the utility may or may not also be customers of the utility, an RECC is governed and owned by its members, who are also its customers. While members of the 16-member systems have an interest in keeping their distribution cooperative's rates as low as possible, they also have an interest in keeping their distribution cooperative's equity position in EKPC viable. The directors of EKPC — who generally are also officers and directors of the 16-member systems — have an obligation to either seek an increase or decrease in EKPC's base rates when the balance between low rates for end users and sufficiently high rates to keep EKPC viable falls out of equilibrium. Though there is a constant friction between these interests, it is one EKPC's board members voluntarily undertake.

the impact of the rate increase on its customers. Delaying an increase in rates for an indefinite period of time would only serve to make a future rate increase much more impactful to customers or precipitate the filing of a request for emergency rate relief. It bears emphasis that Clark Energy's test year ended on December 31, 2019 – several months before the COVID-19 pandemic became a reality in Kentucky – and Clark Energy's financial performance has continued to decline throughout 2020. The limited rate relief requested herein is measured and necessary.

In summary, Clark Energy's proposal is fair, just and reasonable both in regard to the amount of the revenue request and the rate design. Clark Energy is grateful to the Commission for allowing this case to proceed under the streamlined rate case procedures and appreciates the Attorney General's constructive participation in the case. For the reasons set forth above, Clark Energy respectfully requests the Commission to approve its Application and authorize the new rates.

This 29th day of June 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on June 29, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium will be hand delivered to the Commission within thirty (30) days of the end of the current state of emergency.

Counsel for Clark Energy Cooperative, Inc.