

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL'S COMMENTS**

The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), submits the following comments to the Kentucky Public Service Commission ("Commission") in the above-styled matter.

**STATEMENT OF THE CASE**

Clark Energy Cooperative Inc. (hereinafter "Clark," "Clark Energy," or the "Cooperative") is a non-profit electric cooperative organized under KRS Chapter 279, and which provides distribution electric service to member/customers in Bath, Bourbon, Clark, Estill, Fayette, Madison, Menifee, Montgomery, Morgan, Powell and Rowan Counties.

Clark Energy filed an application for an adjustment in rates on May 1, 2020 ("Application") along with a motion to proceed as streamlined rate case pursuant to the pilot program established by the Commission in Case No. 2018-00407. The Attorney

General submitted his electronic service response on May 7, 2020, to maintain his intervention status under the streamlined rate process. One round of discovery was conducted, with Clark Energy providing responses to the Attorney General and Staff's data request on June 22, 2020. Following the submission of these comments, the case will stand submitted for a decision on the record on July 1, 2020.

The Attorney General requests that the Commission: (1) review Clark Energy's request for adjustments to its pro forma expenses to ensure that those are reasonable, (2) require some of the increased revenue sought by Clark to be borne by those other than residential customers, and (3) ensure that increases to the facility charge are minimized.

## **ARGUMENT**

### **I. Clark Energy should be required to comply with recent precedent on pro forma adjustments to its operating expenses.**

The Commission should adjust any operating expenses, specifically including salaries and benefits, to conform to current Commission precedent regarding the reasonableness of those expenses. "The Commission expects the compensation and benefits to be justified with compensation and benefits studies or other similar evidence."<sup>1</sup>

First, the Commission should review compensation for Clark's Staff to ensure that those are reasonable. CEO salary and benefits have risen 10% since 2017.<sup>2</sup> Executive salaries have increased 14% in the past three years.<sup>3</sup> Ratepayers should not fund wage

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<sup>1</sup> See Final Order in *Application of Grayson Rural Electric Cooperative Corporation for an Adjustment of Rates*, 2018-00272 at page 11.

<sup>2</sup> See Exhibit 28 of Eades Testimony and response to Staff DR 12.

<sup>3</sup> See response to Staff DR 17.

and salary increases at unjustified levels. Large salary increases are more likely to be unjustified during this time of unprecedented pandemic, when government agencies and businesses aggressively seek to identify all potential savings. The Attorney General recommends that the Commission caution Clark Energy to keep such increases within the bounds of reason absent exceptional, well-justified circumstances.

Second, with respect to healthcare and retirement costs, the Attorney General requests that the Commission fully evaluate the benefits offered by Clark to ensure that they provide a similar level of compensation as other similarly situated Cooperatives. See Staff DR #10 addressing retirement plans. The same evaluation is requested with respect to Clark's payments related to vision coverage for employees, spousal life insurance, and long-term disability.

The Attorney General requests that the Commission review the aforementioned Pro Forma Adjustments to Operating Expenses for potential savings.

**II. Residential customers should not bear 99.6% of the rate increase proposed by the Company.**

Clark Energy seeks approval to increase its annual revenues by \$916,755, or 2.00%. Of that increase, it proposes that \$912,324 should be borne by the residential class, for a class increase of 2.65%. Clark's expert, John Wolfram, concludes that the residential rate-payers and the time of use class should bear the entire increase in rates.<sup>4</sup>

Clark's consultant, John Wolfram ("Wolfram"), in his testimony on the Cost of Service Study ("COSS"), claims that the residential and the time of use marketing service

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<sup>4</sup> See Testimony of John Wolfram at page 26.

classes do not pay their fair share of the cost basis.<sup>5</sup> Thus, he concludes that the facility charges for these classes should be increased. However, the majority of rate classes fail to pay their fair share of the cost-based fixed charges.<sup>6</sup> It is inequitable to meet revenue deficiencies by increasing the fixed charge for some customer classes, while leaving others that are also deficient unchanged. The proposed increase in the facility charge for residential customers should be mitigated by increasing the facility charges for the other classes whose current facility charge is less than that determined by the COSS.

The Attorney General requests that the burden of the proposed increase in rates be shared appropriately shared across the rate classes.

**III. Clark's proposal to increase its facility charge by 44.8% is unreasonable given current financial hardships faced by many and does not comport with the Commission's precedent of gradualism.**

With respect to the residential class, Clark proposes to increase its facility charge from \$12.43 per month to \$18.00 per month with a portion of the additional revenue generated to be offset by decreases to the energy charge. The Attorney General requests that the Commission fully evaluate this proposed change to ensure that the extent of this shifting of costs from the energy charge to the customer charge aligns Clark with other similarly situated cooperatives.

The Commission has stated, "for an electric cooperative that is strictly a distribution utility, there is merit in providing a means to guard against revenue erosion that often occurs due to the decrease in sales volumes that accompanies poor regional

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<sup>5</sup> See Wolfram Testimony page 22.

<sup>6</sup> Compare current monthly customer charge from Exhibit 4 of the Application with the summary of cost-based rates from the COSS as shown in Exhibit JW-3 page 2.

economics and changes in weather patterns.<sup>7</sup> The Commission consistently has been in favor of raising the customer charge in utility rate cases to reflect the fixed costs inherent in providing utility service.” However, a 44.8% increase to the facility charge is a large increase that will result in higher unavoidable costs for customers who are least financially able to absorb that increase at this time when many families are experiencing unprecedented economic hardship. While the Attorney General lauds Clark for its willingness to offset a portion of this increase though decreases to the energy charge, the large increase to the facility charge is a change that the Commission should evaluate critically.

The Commission relies on the principal of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers and Kentucky families.<sup>8</sup> Mr. Wolfram has agreed that gradualism is prudent, and the facility charge should not immediately be raised to the cost-based rate.<sup>9</sup> In the event that the Commission decides to approve any or all of Clark Energy’s proposals, the Attorney General requests that the Commission continue to follow the precedent of gradualism, giving appropriate

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<sup>7</sup> Final Order, Case No. 2018-00272, *Application of Grayson Rural Electric Cooperative Corporation for an Adjustment of Rates*, at 31 (Ky. Commission March 28, 2019), quoting Final Order, Case No. 2017-00374, *Application of Big Sandy Rural Electric Cooperative Corporation for a General Adjustment of Existing Rates*, at 11-12 (Ky. Commission April 26, 2018).

<sup>8</sup> Case No. 2014-00396, *In the Matter of Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2014 Environmental Compliance Plan; (2) An Order Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief*, Order (Ky.PSC June 22, 2014) (“the Commission has long employed the principle of gradualism”); See also, Case No. 2000-080, *In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks*, Order (Ky. PSC September 27, 2000) (“the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.”).

<sup>9</sup> Wolfram Testimony at page 24.

consideration to affordability for ratepayers. In so doing, the arbitrary increase of the customer charge by 25% of the difference between the cost-based rate and the current rate as proposed by Clark could just as easily be some smaller percentage which takes into account the current hardships that many families are experiencing.

The Attorney General requests that the Commission consider all aspects and potential consequences of the proposed increase to the customer charge when reaching a decision on this issue.

### **CONCLUSION**

WHEREFORE, the Attorney General requests that the Commission, based upon the evidentiary record, set fair, just and reasonable rates for the customers of Clark Energy Cooperative, Inc. In the event that the Commission decides that an increase to rates is appropriate, the Attorney General requests that the increase be delayed until after the current pandemic has abated. A delay of approximately 6-12 months may be appropriate.

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Respectfully submitted,

DANIEL CAMERON  
ATTORNEY GENERAL

A handwritten signature in blue ink that reads "J. Michael West". The signature is fluid and cursive, with a long horizontal stroke at the end.

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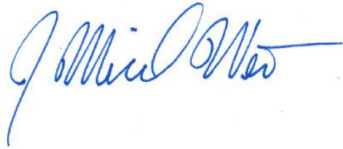
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*Certificate of Service and Filing*

Pursuant to the Commission's Orders dated March 17, 2020 and March 24, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the forgoing was, on June 29, 2019, filed and served by e-mail to the following. Further, the Attorney General will submit the paper originals of the foregoing to the Commission within 30 days after the Governor lifts the current state of emergency.

Hon. David S. Samford  
Hon. L. Allyson Honaker  
david@gosssamfordlaw.com  
allyson@gosssamfordlaw.com

This 29th day of June, 2020.



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J. Michael West, Assistant Attorney General