

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
CUMBERLAND VALLEY ELECTRIC, INC.)	Case No. 2020-00264
FOR A GENERAL ADJUSTMENT OF 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 Public Service Commission (“Commission”) in the above-styled matter.

STATEMENT OF THE CASE

Cumberland Valley Electric, Inc. (“Cumberland Electric” or the “Company”), is a non-profit electric cooperative organized under KRS Chapter 279. It provides distribution electric service to approximately 23,682 customers in Bell, Clay, Harlan, Knox, Laurel, Leslie, Letcher, McCreary, and Whitley Counties.¹ On September 23, 2020, Cumberland Electric filed an application for an adjustment in rates pursuant to the pilot program established by the Commission in Case No. 2018-00407. Specifically, Cumberland Electric is requesting to increase its annual revenues by \$921,195, to achieve a Times Interest Earned Ratio (“TIER”) of 1.91, which equates to an Operating Times Interest Earned Ratio (“OTIER”) of 1.66.² Cumberland Electric is also requesting to increase the residential monthly customer charge from \$12.00 to \$17.00, while

¹ Application at 1.

² *Id.* at 2.

contemporaneously decreasing its residential energy charge by \$0.00138 per kWh.³ The Attorney General submitted his electronic service response on October 7, 2020, to maintain his intervention status under the streamlined rate process. Pursuant to the pilot program’s streamlined process, only one round of discovery was conducted, with Cumberland Electric providing responses to the Attorney General’s and Commission Staff’s discovery requests on November 9, 2020. Following the submission of these comments, the case will stand submitted for a decision on the record on November 17, 2020.

ARGUMENT

I. The Commission should evaluate whether Cumberland Electric has complied with the final Order in Case No. 2016-00169.

The overall economy in the area that Cumberland Electric serves has been in a severe economic decline for over a decade due to the downturn of Eastern Kentucky coal business and the related loss of jobs. Based upon the most recent United States Census information, which does not include the ramifications of the Covid-19 pandemic, the average poverty rate for Cumberland Electric’s service area is 30.1%.⁴ Devastatingly, the Covid-19 pandemic has compounded the problems, and further ravaged Eastern Kentucky’s already strained economy. The Attorney General is as concerned with the current economic issues that Kentuckians in Cumberland Electric’s service area are facing as he has been in the Company’s past few rates cases.⁵ In the past cases, the Attorney General has questioned whether Cumberland Electric fully considered the economic and poverty issues in its service area when awarding continuous raises and providing

³ *Id.*

⁴ <https://www.census.gov/quickfacts/fact/table/KY.US/PST045219>.

Poverty Rates for Cumberland Electric’s Service Area are as follows: Bell County – 31.3%, Clay County – 38.2%, Harlan County – 33.4%, Knox County – 31.9%, Laurel County – 20.6%, Leslie County – 30.8%, Letcher County – 31.3%, McCreary County – 33.7%, and Whitley County – 25.7%

⁵ Case No. 2014, 00159, Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates (Ky. PSC Jan. 16, 2015); Case No. 2016-00169, Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates (Ky. PSC Feb. 6, 2017).

rich benefit packages to its employees and Board of Directors.⁶ Unfortunately, based upon the record, the Attorney General has the same questions in the pending rate case.

In the final Order of Case No. 2016-00169, the Commission stated that it had several continuing concerns regarding the salaries and wages paid to Cumberland Electric employees, particularly increases granted to its salaried employees.⁷ The Commission cited to Cumberland Electric's Case No. 2014-00159, wherein the Commission stated that it shared the Attorney General's concern that Cumberland Electric automatically granted the same pay increases to the non-union/salaried employees that were provided to the union/non-salaried employees.⁸ However, in the pending case, the union/non-salaried employees received an average raise of 1.50% in 2017, 1.50% in 2018, 2.50% in 2019, and 2.50% in 2020.⁹ The Company's non-union/salaried employees, by comparison, received an average raise of 8.51% in 2017, 2.22% in 2018, 3.18% in 2019, and 2% in 2020.¹⁰ Based upon this information, since the issuance of the last Order in Case No. 2016-00169, the non-union/salaried employees have received an average increase of 15.91% in salaries, while the union/non-salaried employees have only received an average increase of an 8% in wages. In other words, after Case No. 2016-00169, the non-union/salaried employees have received close to twice the amount of average raises as the union/non-salaried employees have received.

So not only did the non-union/salaried employees continue to receive raises in lockstep with the union/non-salaried employees since 2017, but they actually received almost double the raise. Cumberland Electric notes that the 2017 raises for the non-union/salaried employees were

⁶ *Id.*

⁷ Case No. 2016-00169, Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates (Ky. PSC Feb. 6, 2017), Order at 5 - 6.

⁸ *Id.*

⁹ Cumberland Electric's response to the Attorney General's First Request for Information, Item 14(c).

¹⁰ Cumberland Electric's response to the Attorney General's First Request for Information, Item 14(b).

due to a wage and salary plan being implemented,¹¹ which leads the Attorney General to its next issue.

In the final Order of Case No. 2016-00169, the Commission also expressed concern over the lack of information to evaluate salaries and wages paid to all Cumberland Electric employees, salaried and union, as compared to other businesses operating within Cumberland Electric's nine-county service area.¹² The Commission further stated that pursuant to the final Order in Case No. 2014-00159, Cumberland Electric provided a salary and wage survey that analyzed Cumberland Electric's salaried employees' salaries against salaries for national, regional, and state cooperative distribution systems located throughout the United States, and salaries for industries in Kentucky with annual revenues of \$48 million, but did not provide salary and wage information specific to its service area.¹³ The Commission asserted that it had begun placing more emphasis on evaluating salary and benefits provided by electric cooperatives as they relate to competitiveness in a broad marketplace, as opposed to wage and salary studies limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies.¹⁴ The Commission further stated that future rate applications filed by Cumberland Electric would be required to include a formal study that provides local wage and benefit information for the geographic area where Cumberland Electric operates and must include state data where available.¹⁵

If the wage and salary plan in the pending case properly compared Cumberland Electric's wage and benefit information with local wage and benefit information for the geographic area where Cumberland Electric operates as required by the final order in Case No. 2016-00169, it is

¹¹ *Id.*

¹² Case No. 2016-00169, Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates (Ky. PSC Feb. 6, 2017), Order at 7.

¹³ *Id.* at 7 – 8.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

difficult to understand how the following results could have been produced. Cumberland Electric provided annual wages for its employees from 2017 – 2019, and the following represents only a small sample of the large increase in wages:

- Employee ID # 1201 went from annual wages of \$102,537.12 to \$116,518.63;
- Employee ID #1205 went from annual wages of \$115,571.33 to \$139,327.49;
- Employee ID #1233 went from annual wages of \$109,568.09 to \$132,844.56; and
- Employee ID #1244 went from annual wages of \$116,706.62 to \$138,858.07.¹⁶

Additionally, Cumberland Electric’s President and CEO saw his annual wages increase from \$184,642.32 in 2017 to \$192,101.98 in 2020.¹⁷

Thus, the Attorney General questions the validity of Cumberland Electric’s wage and salary plan, if it led to an average 15.91% increase in non-union/salaried employees’ salaries since 2017. The Attorney General contends that this does not appear to lead to fair, just, and reasonable rates for the customers, and respectfully requests the Commission ensure that Cumberland Electric’s salary and wage increases have properly complied with its final Order from Case No. 2016-00169.

In Case No. 2016-00169, the Commission also stated that it was concerned that Cumberland Valley had failed to take more aggressive steps to control benefit costs.¹⁸ The Commission found it excessive and not reasonable that Cumberland Electric contributed to both a defined-benefit pension plan as well as a 401(k) plan for salaried employees.¹⁹ Thus, the Commission only allowed Cumberland Electric to recover the costs associated with the defined-

¹⁶ Cumberland Electric’s response to Commission Staff’s First Request for Information, Item 15.

¹⁷ Cumberland Electric’s response to the Attorney General’s First Request for Information, Item 21(b).

¹⁸ Case No. 2016-00169, Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates (Ky. PSC Feb. 6, 2017), Order at 7.

¹⁹ *Id.*

benefit plan for the salaried employees and the 401(k) plan for union employees.²⁰ In the pending rate case, Cumberland Electric admits to having continued to contribute both to a defined-benefit pension plan as well as to a 401(k) for salaried employees—at the same levels as was disallowed in Case No. 2016-00169—until March 1, 2018, at which time the contribution rate to the 401(k) was decreased from 5% to 2%.²¹ Cumberland Electric further states that all employer contributions to 401(k) for salaried employees have finally ceased, but only as of June 1, 2020.²² Thus, none of the associated costs related to the contributions to the 401(k) for the salaried employees should be recoverable in the pending rate case.

Additionally, with respect to benefits packages including health insurance, dental insurance, life insurance and the like, the Attorney General respectfully requests that the Commission fully evaluate the benefits offered by Cumberland Electric to its employees and Board of Directors to ensure that they comply with Commission precedent.

II. Residential customers should not bear 100% of the rate increase proposed by Cumberland Electric.

As previously stated, Cumberland Electric is requesting to increase its annual revenues by \$921,195. To accomplish this, it seeks to increase the residential monthly customer charge from \$12.00 to \$17.00.²³ Notably, Cumberland Electric is not requesting to increase revenues or customer charges for any other class of customer besides Schedule 1 – Residential, Schools, and Churches.²⁴ However, based upon the cost of service study prepared by Cumberland Electric’s expert witness John Wolfram, Schedule I - Res TOD has a negative rate of return of 3.78%,²⁵ and

²⁰ *Id.*

²¹ Direct Testimony of Robert Tolliver (“Tolliver Testimony”), at 8.

²² *Id.*

²³ Application, at 1 – 2.

²⁴ Application, Exhibit 4, Customer Notice; Direct Testimony of John Wolfram (“Wolfram Testimony”), at 26.

²⁵ Wolfram Testimony, at 23.

Schedule VII – Inclining Block Rate has a negative rate of return of 5.54%.²⁶ Cumberland Electric asserted that it did not allocate any portion of the requested rate increase to these two schedules because the effect would be deemed *de minimis*.²⁷ Regardless of the effect, if there are other rate classes in addition to the residential class that allegedly have negative rate of returns based upon the cost of service study, then Cumberland Electric should propose to increase the rates in those classes as well.

Furthermore, if the Commission grants Cumberland Electric’s request to increase the residential monthly customer charge to \$17.00, then residential customers will pay a higher monthly customer charge than Schedule II – Small Commercial/Small Power’s monthly customer charge of \$14.00, and Schedule VII – Inclining Block Rate’s monthly customer charge of \$9.90.²⁸ In the final Order of Case No. 2019-00053, the Commission stated that it does not support a rate design in which the small single-phase commercial class pays a monthly customer charge that is lower than that charged to the residential class.²⁹ Because this appears to be an inequitable result, the Attorney General respectfully requests that any rate increase approved by the Commission be equitably allocated across all of the rate classes.

III. Cumberland Electric’s proposal to increase its residential monthly customer charge by 41.6% is unreasonable.

As previously discussed, with respect to the residential class, Cumberland Electric proposes to increase its monthly customer service charge from \$12.00 to \$17.00,³⁰ which equates to a 41.6% increase. An increase of this magnitude to the residential charge will hinder the

²⁶ *Id.*

²⁷ *Id.*

²⁸ Application, Exhibit 4, Customer Notice.

²⁹ Case No. 2019-00053, Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment in Existing Rates (Ky. PSC June 20, 2019), Order at 16.

³⁰ Application at 2.

residential customers' ability to control their monthly bills, and will pose a financial hardship on those customers who are already struggling to make ends meet.

The Commission has always relied upon the principle of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers.³¹ Therefore, if the Commission approves Cumberland Electric's increase in rates, the Attorney General recommends a two-phased approach for any increase in the residential customer charge. For example, if the Commission were inclined to raise the residential monthly customer service charge from \$12.00 to \$17.00, then the first phase would allow for the customer service charge to increase to \$14.50 in the first year, and then under the second phase the customer charge would increase to \$17.00 in the second year. This would at least provide an opportunity for Cumberland Electric's customers to absorb the higher monthly customer charge over the course of a longer period of time, rather than be immediately forced to pay a 41.6% increase. The Attorney General requests that the Commission consider an increase in the residential monthly charge more gradual than Cumberland Electric's one-time proposed 41.6% increase.

CONCLUSION

WHEREFORE, the Attorney General requests that the Commission set fair, just and reasonable rates for the customers of Cumberland Electric. If the Commission is inclined to grant a rate increase, then it should be limited to what the Company has proven with known and measurable evidence that will result in fair, just, and reasonable rates for the Company's ratepayers.

³¹ 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. 2000-00080, 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 Sept. 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.").

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL



ANGELA M. GOAD
J. MICHAEL WEST
LAWRENCE W. COOK
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KY 40601-8204
PHONE: (502) 696-5421
FAX: (502) 573-1005
Angela.Goad@ky.gov
Michael.West@ky.gov
Larry.Cook@ky.gov
John.Horne@ky.gov

Certificate of Service and Filing

Pursuant to the Commission's Orders dated March 16, 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 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.

L Allyson Honaker
Goss Samford, PLLC
allyson@gosssamfordlaw.com

Mark David Goss
Goss Samford, PLLC
mdgoss@gosssamfordlaw.com

This 16th day of November, 2020.



Assistant Attorney General