

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC ALLEGED FAILURE OF CLARK)	CASE NO.
ENERGY COOPERATIVE, INC. TO COMPLY)	2023-00005
WITH KRS 278.160(2))	

**MOTION FOR REHEARING, RECONSIDERATION AND
CLARIFICATION**

Comes now Clark Energy Cooperative, Inc., (“Clark Energy”), by and through counsel, pursuant to KRS 278.400 and respectfully requests the Kentucky Public Service Commission (“Commission”) to grant rehearing on its August 2, 2023 Order (“August 2nd Order”) in the above-styled case. In support of this motion, Clark Energy respectfully states as follows:

1. On February 16, 2023, the Commission issued an Order to investigate the alleged failure of Clark Energy to comply with KRS 278.160(2) (“February 16th Order”).

2. The Commission’s February 16th Order directed Clark Energy to provide all instances for which it has records where it had transferred one customer’s account to another customer’s account at a different service address. Clark Energy filed a response to the Commission’s February 16th Order on March 8, 2023.

3. Commission Staff issued data requests to Clark Energy on March 15, 2023 to which Clark Energy filed responses on March 31, 2023 and supplemented the responses on April 14, 2023.

4. The Commission’s August 2nd Order contained a section titled “Discussion and Findings”. Within this section the Commission cited two sections of 807 KAR 5:006 and stated

that when the two sections were “[r]ead together, these regulations allow a utility to require payment on a delinquent balance by a customer before taking service at another service address or require payment for service at a service address regardless of who is occupying the service address.” Clark Energy seeks clarification on this sentence. Clark Energy only transferred balances when there was evidence, such as documentation from an assistance voucher showing that the person who was actually indebted to Clark Energy was living at a service address, so that there was a correlation to the delinquent amount and the person that actually incurred the debt. However, in reading the Commission’s Order, it appears that Clark Energy could have left the delinquent amount tied to the service address and required whoever moved into that service address next to pay the delinquent amount of the prior tenant before service would be provided. In other words, the delinquent amount would follow the service address instead of the person that incurred the debt. This would require a person to incur the debt of another, who they may or may not even know, without receiving the benefit of service for the electricity provided that was the subject of the delinquent amount. Clark Energy believes that outcome is far worse than its transfer of a balance to an account once Clark Energy had determined that the person who incurred the debt was residing at the new account address and receiving the benefit of service at that new address. There was a connection between the person who incurred the debt and the account where the balance was transferred. The Commission’s Order seems to indicate that a correlation between the person that owed the debt and the person that has to pay the debt is not needed, just the service address has to be the same.

5. Clark Energy requests rehearing on the Commission’s Order regarding the accounts that would need to be credited or refunded. First, Clark Energy requests rehearing regarding having to issue any refunds or credits to any members. Clark Energy still believes that its

interpretation of the regulations was reasonable. Once the Commission issued an Order that Clark Energy could not transfer balances in this way, Clark Energy stopped this type of balance transfer. Furthermore, once this amount is credited or refunded to these members, the transferred balance will then have to be transferred back to the individual that incurred the original debt. This could lead to additional issues that are discussed in more detail below. If the Commission does not grant rehearing on this issue, in the alternative, Clark Energy requests rehearing on two accounts that the Commission ordered to be refunded/credited. For account number [REDACTED], a transfer occurred on September 17, 2020 in the amount of \$387.34 from [REDACTED] to [REDACTED]. However, on September 21, 2020 (just four days later) Clark Energy transferred this amount plus some, back to [REDACTED] from [REDACTED]. Therefore, there is no amount to refund/credit to [REDACTED]. The second account is account number [REDACTED]. The transfer on this account occurred on December 12, 2019. [REDACTED] was a joint account holder with [REDACTED] (which is the account the balance was transferred from). [REDACTED] lived with [REDACTED] at the service location where the balance was transferred to. On December 13, 2019, [REDACTED] put the service in his name so the delinquent balance from the [REDACTED] joint account was transferred from [REDACTED] account to [REDACTED] account. Since [REDACTED] was a joint account holder on the account that had the delinquent balance, he was responsible for the delinquent amount. That delinquent amount was transferred to [REDACTED] account, so [REDACTED] should not receive a refund/credit since the amount was transferred from her account. This information was included in the information Clark Energy provided to the Commission in response to data requests. Clark Energy requests rehearing to determine that these two accounts should not receive a refund or a credit.

6. Clark Energy also seeks rehearing on issuing refunds to any of the customers listed in Appendix A to the Commission's Order. Issuing refunds entails sending a check to the listed member. In some instances, the listed members will no longer be members of Clark Energy. In the case of returned checks, Clark Energy is unsure how to treat the returned check. In addition, in some instances, the delinquent amount was paid with LIHEAP funds. LIHEAP takes precautions to make sure the individual receiving the assistance does not receive the money, but receives a voucher that goes directly to Clark Energy. If Clark Energy has a member that disconnects service and has a credit balance on the account, due to LIHEAP funds, Clark Energy does not refund the amount of the credit balance to the member but instead refunds that amount to the LIHEAP administrator the funds were received from. The accounts listed in Appendix A cannot be determined how much of the transferred amount was paid by LIHEAP funds since any LIHEAP funds would have been credited against the account as a whole. Therefore, Clark Energy cannot determine what amount should be refunded to the LIHEAP administrator and what amount should be refunded to the member. If Clark Energy issues refunds instead of credits to the accounts listed in Appendix A, Clark Energy could be providing cash to customers for LIHEAP funds. If instead Clark Energy is allowed to issue credits to all of the accounts, then the LIHEAP funds would still be used to pay for electric service. Clark Energy requests rehearing on this issue and requests that only credits to accounts be issued. Clark Energy also requests that during the pendency of the Commission's consideration of this motion that it not be required to refund/credit these customers within thirty days of the Commission's Order, or to notify the customers as required in the August 2nd Order.

7. An issue that was not addressed in the Commission's Order and clarification is needed, is transferring the delinquent amount back to the original member that incurred that debt.

Since the amount is going to be credited/refunded back to the account that paid that balance, the balance would then need to be transferred back to the member that originally incurred that debt. This would mean, in some instances, the delinquent amount would be sent to collections and would impact that member's credit score. In addition, in most instances, the delinquent amount was most likely paid by the person who actually incurred the debt. Even though the amount was paid to Clark Energy through a different member's account, chances are that member was reimbursed by the member that actually owed the debt. In some instances, this could have been unmarried couples living together, who are no longer together. That means one member is going to receive a refund for an amount the other member paid and now the other member will have to pay that amount again. Clark Energy is seeking clarification on how it should handle the transfer of the delinquent amount to the original account and how to respond to the calls it will receive after doing so.

8. Clark Energy requests the Commission to reconsider its determination that Clark Energy and its CEO show cause why they should not be subject to penalties for willful violations of KRS 278.160(2). Clark Energy has responded to the original complaint case involving the Trusty accounts, has responded to the investigation which entailed reviewing voluminous records to provide the requested information to Commission Staff and has stopped the practice of transferring these types of accounts. All of these cases have taken a great deal of time and expense in responding and reviewing the necessary information. This in turn costs all of Clark Energy's members, especially the members who pay their electric bills on time. Clark Energy has approximately 20,240 members. Over a five-year period, Clark Energy is only accused of transferring a balance incorrectly to 45 members (however, the Trusty account and the two mentioned above had already been corrected prior to the Commission's August 2nd Order). This is less than 0.02% of its total member population. In addition, when these delinquent accounts

that are the subject of this proceeding are not paid, that amount is eventually passed on to all of Clark Energy's members when that amount is unable to be collected. Clark Energy is a member owned cooperative and does not have shareholders to absorb the costs of such proceedings or bad debt.

9. Furthermore, Clark Energy has demonstrated with its responses in the Trusty complaint case and this investigation case, that it based its practice on its interpretation of 807 KAR 5:006 Section 15(1)(d). Although the Commission disagrees with this interpretation, Clark Energy had a reasonable belief that it was interpreting the regulations correctly and is unaware if the Commission has offered an interpretation of this regulation in its previous orders. In addition, over the years, the staff of the Commission's Consumer Complaint Division, has been aware of this practice and had not expressed a concern for such practice, prior to the Trusty complaint. In fact, Clark Energy staff had been verbally informed by the Commission's Consumer Complaint Division that as long as there was a benefit of service then the balance could be transferred. Clark Energy did not transfer any balance until such time as Clark Energy had proof that the member who incurred the debt was residing at the address the debt was transferred to. During the pendency of the Trusty complaint case, one of the members who Clark Energy has been ordered to refund had contacted the Commission's Consumer Complaint Division. Clark Energy provided an email response to that informal complaint and was informed to simply notify the member. This aided in the belief of Clark Energy that it was interpreting the statutes correctly and was transferring balances lawfully.

WHEREFORE, on the basis of the foregoing, Clark Energy respectfully requests that the Commission grant rehearing on the issues contained herein, to clarify the portion of its order relating to the delinquent amount staying with the service address and to clarify how Clark Energy

is to transfer back the delinquent amount to the original account holder. Clark Energy is requesting the Commission to reconsider its portion of the Order requiring Clark Energy and its CEO to show cause and to toll the time for which Clark Energy has to notify customers of the refunds/credits, the time to issue the refunds/credits and the time for Clark Energy and its CEO to show cause why they should not be subject to penalties, until such time as the Commission issues an Order on this Motion.

Dated this 22nd day of August, 2023.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that foregoing was submitted electronically to the Commission on August 22, 2023 and that there are no parties that have been excused from electronic filing. Pursuant to prior Commission orders, no paper copies of this filing will be submitted.



Counsel for Clark Energy Cooperative, Inc.