

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF TAYLOR COUNTY)
RURAL ELECTRIC COOPERATIVE CORPORATION) **CASE NO. 2023-00147**
FOR A GENERAL ADJUSTMENT OF RATES)

ATTORNEY GENERAL’S POST-HEARING BRIEF

The Intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“Attorney General”) submits the following Post-Hearing Brief to the Kentucky Public Service Commission (“Commission”) in the above-styled matter.

STATEMENT OF THE CASE

Taylor County Rural Electric Cooperative Corporation (“Taylor County RECC” or the “Company”), is a not-for-profit, member-owned rural electric distribution cooperative organized under KRS 279.¹ The Company distributes retail electric power to approximately 27,700 member customers in the Kentucky counties of Adair, Casey, Cumberland, Green, Hart, Marion, Metcalfe, Russell, and Taylor.² Taylor County RECC owns approximately 3,300 circuit miles of distribution line in its service territory, and purchases its power requirements from East Kentucky Power Cooperative, Inc. (“EKPC”), pursuant to a Wholesale Power Contract dated October 1, 1964, and subsequent amendments.³ The Company is a utility subject to the rates and service jurisdiction of the Commission.

¹ Application, paragraph 1.

² *Id.*

³ *Id.*

On May 1, 2023, Taylor County RECC filed its notice of intent to file an application for a general adjustment of rates. The Company subsequently filed its application on June 6, 2023, utilizing a historic test year ending December 31, 2021, which included adjustments for alleged known and measurable changes.⁴ The Commission granted intervention to the Attorney General by Order on June 6, 2023. The Commission then issued an Order on June 15, 2023, which deemed the Company's application filed as of June 6, 2023.

In the application, Taylor County RECC requests an increase in revenues totaling \$6,377,262 per year, or 12.68% over current revenues, to achieve an Operating Times Interest Earned Ratio ("OTIER") of 1.85.⁵ Taylor County RECC is also requesting to increase the residential monthly customer charge from \$10.22 to \$16.84,⁶ or a 64.775% increase. The Attorney General and Commission Staff each propounded several rounds of discovery to Taylor County RECC, to which the Company filed responses into the record. On August 18, 2023, the Attorney General filed direct testimony into the record of his expert witness Mr. John Defever, CPA ("Mr. Defever"). The Company filed rebuttal testimony on September 15, 2023. An evidentiary hearing was conducted on October 26, 2023. The Company then filed responses to post-hearing discovery requests on November 9, 2023. The pending case will stand submitted for a decision on the record on December 14, 2023.

ARGUMENT

Pursuant to KRS 278.190(3), Taylor County RECC bears the burden of proof to demonstrate "that an increase of rate or charge is just and reasonable."⁷ Taylor County RECC has failed to meet its burden of proof to demonstrate that the requested revenue increase will result in

⁴ *Id.* at paragraph 8.

⁵ *Id.* at paragraph 4.

⁶ *Id.* at paragraph 5.

⁷ *Kentucky-American Water Company v. Commonwealth ex rel. Cowan*, 847 S.W.2d 737,741 (Ky. 1993).

fair, just, and reasonable rates.⁸ The Attorney General recommends a downward adjustment to the requested revenue increase because approving the Company's application as is will result in unfair, unjust, and unreasonable rates due to the following issues.

I. Taylor County RECC revised its rate increase and revenue requirement request due to agreeing to, or not objecting to, specific recommendations proposed by the Attorney General.

In Taylor County RECC's rebuttal testimony, and at the evidentiary hearing, the Company agreed to, or did not object to, specific recommendations and adjustments proposed by the Attorney General, as discussed below.⁹ According to the Company, the acceptance of these adjustments reduces the Company's requested rate increase and proposed revenue requirement by approximately \$244,247,¹⁰ for a revised requested rate increase of \$6,133,136.¹¹

Taylor County RECC agrees to, or does not object to, the following adjustments proposed by the Attorney General:

1. Remove the monetary amount associated with employee awards, which is a reduction to the proposed revenue requirement of \$10,915.¹²
2. Normalize depreciation expenses by using year-end balances for 2021 instead of 2022, which is a reduction to the proposed revenue requirement of 134,735.¹³

⁸ See KRS 278.190. "At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility...."; See KRS 278.030(1). "Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person."

⁹ Rebuttal Testimony of John Wolfram ("Wolfram Rebuttal Testimony") at 5 – 10.

¹⁰ The net effect of these adjustments is a reduction of \$244,247, which also includes the Company's correction of its cell reference error in Schedule 1.12 - Health Care Costs. This correction changed the Company's original adjustment of (\$32,758) to (\$17,143). The remaining \$21 difference may be due to rounding.

¹¹ Wolfram Rebuttal Testimony at 10.

¹² *Id.* at 5; Direct Testimony of John Defever, CPA ("Defever Testimony") at 8 – 9.

¹³ Wolfram Rebuttal Testimony at 7; Defever Testimony at 11 – 12.

3. Removal of the costs for preliminary work for a GPS System Project due to the fact that the expense is nonrecurring, which is a reduction to the proposed revenue requirement of \$24,600.¹⁴
4. Reduce the test year meter sampling costs to reflect the testing of only 1,000 meters annually pursuant to the Company's Sample Meter Testing Program approved by the Commission in 2021,¹⁵ which is a reduction to the proposed revenue requirement of \$86,483.¹⁶
5. Removal of consulting fees to develop a plan for the Sample Meter Program due to the fact that the expense is nonrecurring, which is a reduction to the proposed revenue requirement of \$3,150.¹⁷

II. Taylor County RECC's proposal to increase the electric rates primarily on the residential customer class, to increase the residential monthly customer charge by 64.775%, and to increase the average residential total electric bill by \$20.58 per month is unreasonable.

As aforementioned, Taylor County RECC is requesting a revised rate increase of \$6,133,136 per year,¹⁸ but, notably the Company proposes to place \$5,907,807 of the requested increase squarely on the shoulders of the residential class.¹⁹ The Company proposes a \$225,191 rate increase for the General Purpose Part 1, less than 50 KVA class, but no increase is proposed to the following rate classes: General Purpose Part 2, greater than 50 KVA class, Large Industrial, Street Lighting, or Special Contracts.²⁰

¹⁴ Wolfram Rebuttal Testimony at 8; Defever Testimony at 13 – 14.

¹⁵ See Case No. 2021-00181, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for Approval of Sample Meter Testing Program for Single-Phase Meters* (Ky. PSC Sept. 22, 2021).

¹⁶ Wolfram Rebuttal Testimony at 8 – 9; Defever Testimony at 14 – 15.

¹⁷ Wolfram Rebuttal Testimony at 9 – 9; Defever Testimony at 14 – 15.

¹⁸ Application, paragraph 5.

¹⁹ Wolfram Rebuttal Testimony, Exhibit JW-9, page 1 of 10. The Company proposes a revised rate increase of \$5,906,397 to the Residential Farm & Home customer class, and a \$1,410 rate increase to the Residential Marketing Rate customer class, for a total increase of \$5,907,807 to the residential customer classes.

²⁰ Wolfram Rebuttal Testimony, Exhibit JW-9.

As previously discussed, with respect to the residential class, Taylor County RECC proposes to increase its residential monthly customer charge from \$10.22 to \$16.84, which equates to a 64.775% increase. The Company touted at the evidentiary hearing that it has the second lowest customer charge, energy charge, and total electric bill as compared to the other electric cooperatives in the Commonwealth.²¹ Nevertheless, if the Commission were to grant Taylor County RECC's proposed \$16.84 residential monthly customer charge and revised residential energy charge of \$0.093771 per kWh,²² then the Company's residential customers will have a higher average total bill than eleven other electric cooperatives in the state, with only seven electric cooperatives having a higher average total bill.²³ In fact, if the Commission were to grant Taylor County RECC's proposed, revised rate increase, the average residential customer using 1,113 kWh per month will experience a \$20.58 increase in their monthly electric bill.²⁴ An increase of this magnitude to the residential charge and energy charge will hinder residential customers' ability to control their monthly electric bills, and pose a financial hardship on those customers already struggling to make ends meet.

It is important to note that the average poverty rate in Taylor County RECC's service territory is 20.8%,²⁵ with the highest poverty rate of 27% in Russell County²⁶ and the lowest of 15.8% in Marion County.²⁷ The Company acknowledges that it is aware of the high poverty rates

²¹ Video Transcript of Evidence ("VTE") at 9:23:40 – 9:23:48.

²² Wolfram Rebuttal Testimony at 11, and Exhibit JW-9.

²³ Taylor County RECC's response to the Attorney General's Post-Hearing Request for Information ("Attorney General's Post-Hearing Request"), Item 1, Excel Spreadsheet.

²⁴ Wolfram Rebuttal Testimony, Exhibit JW-9.

²⁵ Taylor County RECC's response to the Attorney General's First Request for Information ("Attorney General's First Request"), Item 2(g); *See*

<https://www.census.gov/quickfacts/fact/table/marioncountykentucky,hartcountykentucky,greencountykentucky,cumberlandcountykentucky,caseycountykentucky,adaircountykentucky/PST045222>;

<https://www.census.gov/quickfacts/fact/table/taylorcountykentucky,russellcountykentucky,metcalfecountykentucky/PST045222>.

²⁶ *See* <https://www.census.gov/quickfacts/fact/table/russellcountykentucky/PST045222>.

²⁷ *See* <https://www.census.gov/quickfacts/fact/table/marioncountykentucky/PST045222>.

in its service territory.²⁸ Taylor County RECC also admits that its customers have experienced a “rise of cost-of-living” and “tightening financial conditions” that have weighed heavily on the customers.²⁹ Due to the existing poverty and difficult economic conditions, the Attorney General appeals to the Commission to employ gradualism when awarding any increase in Taylor County RECC’s residential monthly customer charge as well as the energy charge. The Commission has always relied upon the principle of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers.³⁰ Taylor County RECC’s proposed 64.775% increase to the residential monthly customer charge, and an increased average electric bill for residential customers of \$20.58 per month violates this important ratemaking principle.

If the Commission were to grant Taylor County RECC’s requested \$16.84 residential monthly customer charge, the Attorney General recommends that the increase be implemented in a two-phased approach. For example, during the first phase the residential monthly customer charge could increase to \$13.53 in the first year, and then under the second phase increase to \$16.84 in the second year. This approach provides an opportunity for Taylor County RECC’s customers to absorb the higher monthly customer charge over a longer period of time, rather than immediately force customers to pay a 64.775% increase.

Moreover, if the Commission approves the requested increase to the residential monthly customer charge, the residential customers will be paying only slightly less than the proposed

²⁸ Taylor County RECC’s response to the Attorney General’s First Request, Item 2(g).

²⁹ Taylor County RECC’s response to the Attorney General’s First Request, Items 2(a); Taylor County RECC’s response to the Attorney General’s Second Request for Information (“Attorney General’s Second Request”), Item 1.

³⁰ 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*, (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* (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.”)

\$17.02 monthly customer charge for the General Purpose Part 1, less than 50 KVA class, which includes small commercial and industrial customers.³¹ However, under the Company's proposed rates the residential class will be paying a higher energy charge than the General Purpose Part 1, less than 50 KVA class - \$0.093771 per kWh versus \$0.081231 per kWh, respectively.³² 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.³³ The Attorney General is concerned that the Company's proposed monthly customer charge for the residential class being only 18 cents less than that proposed to be paid by the commercial and industrial customers under the General Purpose Service, Part 1 class, coupled with the higher proposed energy charge for the residential class than the General Purpose Service, Part 1 customer class, leads to an inequitable result.

Thus, the Attorney General respectfully requests the Commission to continue to rely upon the principle of gradualism when awarding any increase to the residential monthly customer charge as well as the energy charge for Taylor County's RECC's customers. The Attorney General also requests the Commission utilize its expertise to determine whether any rate increase approved by the Commission should be equitably allocated across all of the rate classes, instead of approximately 96.33% of the rate increase being placed on the residential class.

III. OTHER REVENUES AND EXPENSES

- a. Taylor County's Other Electric Revenues should be increased by \$110,000 in order to produce to fair, just, and reasonable rates.**

³¹ Application, Exhibit 4.

³² Wolfram Rebuttal Testimony, Exhibit JW-9.

³³ 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.

Taylor County RECC included \$615,847 in Other Electric Revenues in the proposed revenue requirement.³⁴ This proposed amount was based on 2021 Other Electric Revenues, which was much lower than the Company's Other Electric Revenues for 2018, 2019, and 2022.³⁵ Taylor County RECC's Other Electric Revenues were \$767,669.78 in 2018, \$764,124.97 in 2019, and \$726,198.15 in 2022.³⁶ According to the Company, the 2020 and 2021 Other Electric Revenues were lower than the other aforementioned years because the Commission ordered utilities to refrain from disconnections and waive late payment charges in Case No. 2020-00085.³⁷

The Attorney General recommends the Commission increase the Other Electric Revenues to reflect the most known and measurable amounts, which is based on the 2022 Other Electric Revenues of \$726,198.³⁸ Taylor County RECC argues that the lower \$615,847 amount should be used for the Other Electric Revenues because, “[i]n 2021, the commission lifted the order to waive all late payment charges and to cease disconnections for non-payment. Taylor County RECC also expects penalties and reconnection/collection fees to level off once members adjust to the enforced policies of past due bills.”³⁹ However, this argument falls flat when analyzing the Company's Other Electric Revenues from before the Covid-19 pandemic, because the amounts from 2018 and 2019 were even higher than the amounts in 2022.

Taylor County RECC further claims that using the 2022 Other Electric Revenues would violate the matching principle.⁴⁰ However, the Company's claim is in error. While Taylor County RECC has made numerous adjustments to expenses to reflect known and measurable changes, it

³⁴ Taylor County RECC's response to the Attorney General's First Request, Item 97.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19* (Ky. PSC Mar. 16, 2020).

³⁸ Defever Testimony at 4 – 5.

³⁹ Taylor County RECC's response to the Attorney General's Second Request, Item 37(f).

⁴⁰ Wolfram Rebuttal Testimony at 3.

objects to similar adjustments to the associated revenues. The Attorney General's intention is not to replace the test year amounts with 2022 but to correct for the Company's use of a non-representative year in its filing. While the Attorney General recommended the use of 2022 amounts as the most known and measurable, even the use of an average of the years 2018, 2019, and 2022 would be more representative than the non-representative period of 2021. A three-year average equates to \$752,664, and is higher than the Attorney General's recommendation. The Company's request would result in a mismatch of adjusted test year revenues to adjusted test year expenses. Based on current revenues, the Company's approach could lead to overcollections of approximately \$110,000 per year until the next rate case.

Thus, the Attorney General recommends the Commission use the most known and measurable amount for the Company's Other Electric Revenue of \$726,198. If the Commission were to accept this recommendation then it would reduce Taylor County RECC's proposed revenue requirement by \$110,000.⁴¹

b. The Commission should only allow what is reasonable when evaluating Taylor County RECC's employee compensation and benefit plans.

First, Taylor County RECC's prior chief executive officer's ("CEO") annual salary, without benefits, was \$140,378.13 in 2021,⁴² but the newly hired CEO's annual salary, without benefits, was \$213,000 for 2022, and \$234,300.00 for 2023.⁴³ The benefit amount for the new CEO for 2023 is projected to be approximately \$66,000.⁴⁴ The Attorney General requests the Commission to evaluate and determine whether it is reasonable to pay the CEO of a not-for-profit

⁴¹ Defever Testimony at 5.

⁴² Taylor County RECC's response to the Attorney General's First Request, Item 24(a), Excel Spreadsheet.

⁴³ Taylor County RECC's response to the Attorney General's Post-Hearing Request, Item 2, Excel Spreadsheet.

⁴⁴ *Id.*

rural electric cooperative that provides electricity to only 27,700 customers over \$300,000 in total compensation and benefits annually.

Second, Taylor County RECC includes \$1,154,739 in health care premiums in the proposed revenue requirement.⁴⁵ Taylor County RECC paid for 100% of the employees' health insurance premiums through 2022.⁴⁶ As of January 1, 2023, the Company only requires its employees to pay for 5% of their health insurance premium costs for all coverages, including single and family coverage.⁴⁷ In other words, the Company (i.e. the customers) currently pays for 95% of the employee health insurance premium costs. In prior cases, the Commission has limited the recoverable portion of the company-paid health insurance premiums to the most current U.S. Bureau of Labor Statistics' ("BLS") averages for single and family coverage in order to rein in benefit expenses.⁴⁸ The BLS 2023 averages for single and family coverages are 79% and 67%, respectively.⁴⁹ When compared to the BLS 2023 averages, Taylor County RECC is contributing 16% more to health insurance premiums for single coverage, and 28% more in family health insurance premiums. Additionally, above and beyond the excess contributions to employee health insurance premiums, Taylor County RECC also contributes \$3,500 to each employee Health Savings Account for single coverage, and \$7,000 for family coverage.⁵⁰

⁴⁵ Wolfram Testimony, Exhibit JW-2, Schedule 1.12.

⁴⁶ Taylor County RECC's response to the Attorney General's First Request, Item 34(a).

⁴⁷ Direct Testimony of Patsy Walters ("Walters Testimony") at 8.

⁴⁸ See Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC June 30, 2022), Order at 9.

⁴⁹ Bureau of Labor Statistics, Employee Benefits, March 2023, Table 3, private industry workers, <https://www.bls.gov/news.release/ebs2.t03.htm>; Bureau of Labor Statistics, Employee Benefits, March 2022, Table 4, private industry workers, <https://www.bls.gov/news.release/ebs2.t04.htm>; Taylor County RECC's response to the Attorney General's First Request, Items 34(c) and (d); See Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC June 30, 2022), Order at 9.

⁵⁰ Taylor County's response to the Attorney General's Second Request, Item 17, Attachment, page 107 of 121; Walters Testimony at 8.

Third, the Company changed its contribution rate to employees' 401(k) accounts from 10% of full compensation with employees contributing 3% of gross wages, to a contribution rate of 16% of employee base compensation while only requiring employees to contribute 3% of their base pay.⁵¹ Even though this modification increased Taylor County RECC's 401(k) contributions by \$126,206,⁵² the Company did not provide any documentation to support the 16% contribution rate despite being requested and having the burden to do so.⁵³ Taylor County RECC also admits that it did not conduct a formal study to determine whether the 16% contribution rate to employee 401(k) accounts was even reasonable.⁵⁴

Finally, Taylor County RECC pays for 100% of the costs on behalf of the employees of the following: life insurance that is two times the base salary of each employee,⁵⁵ business travel and accident insurance,⁵⁶ accidental death and dismemberment insurance,⁵⁷ and long-term disability insurance.⁵⁸ The Company also contributes 80% of the premium for all coverages of dental insurance for the employees.⁵⁹ Taylor County RECC further provides bonuses, awards,⁶⁰ and annual raises that are not connected to a written formal performance review because the Company inexplicably does not have a written formal performance review process.⁶¹ In 2022 alone, the Company provided all employees an annual raise, but almost half of the employees

⁵¹Direct Testimony of Jeffrey R. Williams ("Williams Testimony") at 7; Taylor County RECC's response to the Commission Staff's First Request for Information ("Staff's First Request"), Item 32; Walters Testimony at 9 – 10.

⁵² Defever Testimony, Errata Documents at 17, filed on October 30, 2023.

⁵³ Taylor County RECC's response to the Attorney General's First Request, Items 36(a), (b), and (c); Taylor County RECC's response to the Attorney General's Second Request, Items 61(a), (b), and (c).

⁵⁴ Taylor County RECC's response to the Attorney General's First Request, Item 36(a).

⁵⁵ Walters Testimony at 9.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Taylor County RECC's response to the Attorney General's Second Request, Item 6.

⁶¹ Taylor County RECC's response to the Attorney General's First Request, Items 3(b) and 4(b).

received a double digit raise.⁶² The Company also provides vehicle allowances for specific employees.⁶³ It should be noted that Taylor County RECC allowed the prior CEO to purchase a Company-owned 2020 Ford Explorer for \$10,000, leaving Taylor County RECC (i.e. the customers) to take a loss of \$13,094.16.⁶⁴

Taylor County RECC admits that it has not conducted a formal study comparing the Company's wage/salary and benefit information to the local wage/salary and benefit information for the geographic area in which the Company provides service.⁶⁵ Due to the high poverty rates that exist in Taylor County RECC's service area, coupled with the ongoing inflationary issues, the Company's customers have been required to cut expenditures. Likewise, the Company needs to do the same. Based upon the foregoing, the Attorney General requests the Commission to review and evaluate Taylor County RECC's compensation and benefit plans and only allow what is reasonable, which will lead to fair, just, and reasonable rates.

c. Taylor County RECC's proposed Board of Directors' expenses should be removed from the proposed revenue requirement, or in the alternative substantially reduced in order to achieve fair, just, and reasonable rates.

Taylor County RECC proposes to include \$122,483 in Board of Directors' fees for the adjusted test year, which includes expenses for the meeting costs, per diems, and retainer fees.⁶⁶ The Company asserts that it has recently replaced Board of Director health insurance expense with retainer fees.⁶⁷ Yet, in its last rate case the Company removed the Board of Directors' health

⁶² Taylor County RECC's response to the Attorney General's First Request, Item 3, Excel Spreadsheet updated response filed into the record on November 9, 2023; Taylor County RECC's response to the Attorney General's First Request, Item 102, Excel Spreadsheet updated response filed into the record on November 9, 2023.

⁶³ Taylor County's response to the Attorney General's Second Request, Item 7.

⁶⁴ Taylor County's response to the Attorney General's First Request, Item 66, Excel Spreadsheet Attachment and Corrected Response to Item 66, Excel Spreadsheet Attachment; Taylor County RECC's response to the Attorney General's Second Request, Item 22.

⁶⁵ Taylor County's response to the Attorney General's First Request, Item 6.

⁶⁶ Wolfram Testimony, Exhibit JW-2, Schedule 1.09.

⁶⁷ Taylor County RECC's response to the Commission Staff's Second Request for Information ("Staff's Second Request"), Item 17(b).

insurance expense as well as the per diem expenses from the revenue requirement.⁶⁸ The Attorney General's expert witness, Mr. Defever states that the Company has not provided proper justification for the inclusion of \$122,483 in the pending rate increase request, and therefore proposes to remove the same from the revenue requirement.⁶⁹

In the alternative, if the Commission permits the inclusion of certain Board of Directors' fees, only those fees that are reasonable should be included in the Company's revenue requirement. For example, Taylor County RECC pays each member of the Board of Directors \$1,000 in a monthly retainer, \$325 to attend each monthly meeting, and reimburses mileage for the personal use of the members' vehicles to attend meetings and conferences.⁷⁰ So at the bare minimum, each member of the Board of Directors receives \$1,325 per month, plus reimbursement of mileage, to attend one meeting, but will receive an extra \$325 for each and every additional meeting.⁷¹ During cross-examination at the evidentiary hearing, Taylor County RECC admitted that each monthly Board of Directors' meeting generally lasts two hours.⁷² In comparison, a Taylor County RECC customer who works a forty-hour workweek for minimum wage of \$7.25 per hour will earn approximately \$1,160 per month. Consequently, in this example, a Taylor County RECC member of the Board of Directors will make more money to attend a two hour monthly meeting than a customer working 120 hours in a month. This result does not appear fair, just, or reasonable.

The Company additionally provides members of the Board of Directors the meeting fee even if they are absent for up to two meetings per year; allows for directors to not only receive reimbursement for their actual expenses to attend meetings, conferences, and seminars, but also

⁶⁸ Case No. 2012-00023, *Application of Taylor County Rural Electric Cooperative Corporation for an Adjustment of Rates* (Ky. PSC Mar. 26, 2013).

⁶⁹ Defever Testimony at 9.

⁷⁰ Taylor County RECC's response to the Attorney General's Second Request, Item 12(a), Attachment page 8 of 8.

⁷¹ *Id.*; VTE at 10:15:41 – 10:17:47.

⁷² VTE at 10:15:20 – 10:15:30.

may receive reimbursement for the expenses of rooms and meals for their spouses while attending the same; and if a member, “feels he is due a current fee for conducting cooperative business not covered . . . then this fee will be presented to the full board at the next regular board meeting for approval.”⁷³

Based upon the foregoing, the Attorney General requests the Commission deny the inclusion of the unreasonable Board of Directors’ expenses. In the alternative, the Attorney General requests the Commission only approve of Board of Directors’ expenses that will lead to fair, just, and reasonable rates.

d. The Commission should deny Taylor County RECC’s request to quadruple its right-of-way expense.

Taylor County RECC’s test year right-of-way expense is \$1,050,898.⁷⁴ In the pending case, the Company proposes to more than quadruple its right-of-way expense by making a pro forma adjustment of \$3,279,658 to the test year expense, for a total of \$4,330,556 in right-of-way expense.⁷⁵ However, when reviewing the right-of-way costs in the test year of 2021, as well as the years prior to the test year, the Company never spent close to the proposed \$4.3 million dollars.⁷⁶ As such, the Attorney General’s expert witness Mr. Defever recommends basing the adjusted test year right-of-way expenses on a three-year average (2021-2023), which equates to \$2,013,102 per year.⁷⁷

Beyond a large increase to customer electric rates, a further concern of awarding Taylor County RECC the requested \$4.3 million dollars in right-of-way expense is that the Company

⁷³ Taylor County response to the Attorney General’s Second Request, Item 12(a), Attachment, page 8 of 8.

⁷⁴ Wolfram Testimony, Exhibit JW-2, Reference Schedule 1.05.

⁷⁵ *Id.*

⁷⁶ Taylor County RECC’s response to the Attorney General’s First Request, Item 126; Taylor County RECC’s response to the Attorney General’s Second Request, Item 51.

⁷⁷ Defever Testimony at 7. Mr. Defever estimated the full year of right-of-way expense for 2023 based on the year-to-date information provided in Taylor County RECC’s response to the Attorney General’s Second Request, Item 51.

admits that it has reduced right-of-way maintenance for a number of years in the past.⁷⁸ In fact, seven out of the past eleven years the Company did not actually spend the budgeted right-of-way maintenance expense.⁷⁹ Yet, it does not appear that the Company equally pared back employee compensation and benefits during this same timeframe.⁸⁰ It is important to note that if the Commission approves the more than quadrupling of the right-of-way expense then the Company will continue to receive the full \$4.3 million every year until rates are reset, regardless of whether or not the funds are used for right-of-way clearing.⁸¹

Thus, the Attorney General recommends a right-of-way expense of \$2,013,102. If the Commission accepts this recommendation then it represents a reduction of \$2,317,454 million from the Company's proposed revenue requirement.⁸² Moreover, in light of Taylor County RECC's past practices of intentionally spending less than the budgeted right-of-way allocation, the Attorney General further recommends that the Company be required to record the annual amounts spent below the Commission authorized right-of-way amount as a regulatory liability to either return to the ratepayers in the next rate case or to offset any overspending in the interim period until the next rate case.⁸³

Furthermore, in the face of the rising right-of-way costs, Taylor County RECC acknowledges that it does not work with other regional electric utilities, such as South Kentucky Rural Electric Cooperative Corporation ("South Kentucky RECC"), to develop regional bids for

⁷⁸ Williams Testimony at 5.

⁷⁹ Taylor County RECC's response to the Attorney General's First Request, Item 126 and Corrected Response, Item 126.

⁸⁰ Taylor County RECC's response to the Attorney General's First Request, Items 3, 4, 5, 7, 10, 24, 28, 34, 35, and 36; Taylor County RECC's response to the Attorney General's Second Request, Items 6, 7, 9, 11, 12, 18, 22, 32, and 34.

⁸¹ Defever Testimony at 7.

⁸² *Id.*

⁸³ *Id.*

right-of-way management, which could create significant cost savings.⁸⁴ The Company further admits that it does not attempt to coordinate its right-of-way program with the Kentucky Transportation Cabinet/Kentucky Department of Highways' right-of-way program, which could also provide savings for its customers.⁸⁵ The Attorney General requests for the Commission to require or encourage Taylor County RECC to pursue opportunities with regional electric utilities, as well as the Kentucky Transportation Cabinet/Kentucky Department of Highways, in an effort to reduce the ever increasing right-of-way expense that the Company's customers pay for through electric rates.

e. The Company's legal fee expenses should be reduced to a five-year average.

Taylor County RECC includes \$65,026 for legal fee expenses (excluding the rate case legal expenses) in the pending revenue requirement, which is based off of the 2021 legal fee expenses.⁸⁶ But, the legal expenses in 2018, 2019, 2020, and 2022 were lower than the 2021 legal fee expense amount.⁸⁷ For example, the legal expense was \$63,800 in 2018, \$32,289 in 2019, \$19,647 in 2020, and \$34,627 in 2022.⁸⁸ Due to the fact that the proposed legal fee expenses for 2021 is the highest from the last five years the Attorney General's expert witness Mr. Defever recommends a five-year average of \$43,078 for the legal fee expense in order to smooth out the fluctuations.⁸⁹

The Company asserts in its rebuttal testimony that using a five-year average for the legal fee expense is problematic because it includes the period of the Covid-19 pandemic in which legal costs dropped to low levels.⁹⁰ The Attorney General believes it is reasonable to utilize the five-

⁸⁴ VTE 9:27:55 – 9:46:47; See Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC June 30, 2022), Order at 30.

⁸⁵ Taylor County RECC's response to the Attorney General's First Request, Item 19(f).

⁸⁶ Taylor County RECC's response to the Attorney General's Second Request, Item 55.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Defever Testimony at 13.

⁹⁰ Wolfram Rebuttal Testimony at 8.

year average of \$43,078 for the legal fees because it is basing the expense on actual, historical costs. In the alternative, even if the Commission were to exclude the legal expense from 2020, the four-year average for legal fees based upon 2018, 2019, 2021, and 2022 would be \$48,936, which is still significantly lower than the Company's requested amount of \$65,026.

The Attorney General respectfully requests the Commission reduce the legal fee expense to \$43,078, which would be a reduction in the revenue requirement of \$21,948.⁹¹ In the alternative, if the Commission deems it necessary to remove the 2020 legal expense from the average, then the Attorney General requests for the four-year average of \$48,936 legal expense to be used, which would be a reduction in the revenue requirement of \$16,090.

f. Income from all sources should be included in the pending rate case to offset the proposed rate increase.

As previously discussed, Taylor County RECC based its requested rate increase on an OTIER, instead of basing the rate increase upon a Times Interest Earned Ratio ("TIER").⁹² Generally, the OTIER formula does not include non-operating margins income, while the TIER formula does include non-operating margins income. Therefore, if the Company did not include non-operating margins income from all sources in the requested revenue requirement, then the Attorney General requests that the same be included in order to offset some portion of the requested rate increase. If Taylor County RECC were to make pro forma adjustments for increased expenses, but not simultaneously include all income that the utility receives, then this would lead to an inequitable result. The Attorney General therefore requests the Commission to include all of the Company's non-operating margins income, if any, when calculating the revenue requirement.

g. Taylor County RECC needs to address the significant increase in credit card processing fees.

⁹¹ Defever Testimony at 13.

⁹² Application, paragraph 4.

Taylor County RECC admits that payment processing fees have risen significantly in the past decade.⁹³ For example, in 2013 the Company paid \$63,152.62 in credit card processing fees, as compared to \$184,677.57 in 2022, and is on track to pay over \$200,000 in credit card processing fees for 2023.⁹⁴ This substantial increase in credit card processing fees represents a more than tripling of the credit card processing fees over the past decade. Currently, the Company does not require any of the assessed credit card fees to be passed through and paid by the customer, “to avoid negative customer sentiment.”⁹⁵ Taylor County RECC asserts that it, “absorbs all credit card fees.”⁹⁶ However, due to it being a member-owned cooperative, the majority, if not all, of its revenue stream is obtained from the customers.⁹⁷ As such, even if the credit card fees are not being included in the rates, it does not change the fact that the expenses are still being paid with customer funds. By not requiring customers who pay their electric bill with a credit card to pay the associated processing fee, customers who are utilizing payment options that do not assess a corresponding fee, such as cash and checks, are essentially subsidizing the customers who use a credit card. Furthermore, it is possible that the Company is enticing customers to use credit cards in order to increase points and rewards associated with various credit card loyalty programs.

According to a publication by the Federal Reserve, “[a]lmost all people with income of at least \$100,000 had a credit card,” and most people with income over \$50,000 have a credit card,

⁹³ Walters Testimony at 7.

⁹⁴ Taylor County RECC’s response to the Attorney General’s First Request, Item 30(c), Excel Spreadsheet; VTE 11:33:25 – 11:36:50.

⁹⁵ Taylor County RECC’s response to the Attorney General’s Second Request, Item 21.

⁹⁶ *Id.* at Item 20.

⁹⁷ See Case No. 2016-00077, *Application of Licking Valley Rural Electric Cooperative Corporation for an Order Issuing a Certificate of Public Convenience and Necessity*, Licking Valley RECC’s response to the Attorney General’s Second Request for Information, Item 5.

but at lower income levels having a credit card was less common.⁹⁸ In fact, 43% of people with family income less than \$25,000 do not have a credit card.⁹⁹ Due to low-income customers having more difficulty obtaining credit cards,¹⁰⁰ the Attorney General is concerned that the continuing escalation of credit card processing fees are being subsidized and borne by those customers who can least afford it. Taylor County RECC can follow the example of other utilities by still allowing utility bills to be paid with credit cards, etc. as long as the customer pays 100% of the corresponding fee that is assessed to the Company.¹⁰¹

The Attorney General recognizes that the Commission allowed credit card fees to be included in rates in a recent rural electric cooperative case,¹⁰² but due to the significant increase of credit card processing fees, it is important to continue to advocate that these fees be paid by the customer utilizing the credit card instead of the costs being subsidized by all customers.

h. A 1.85 OTIER is not necessary for Taylor County RECC to provide safe and reliable electric service.

Taylor County RECC has failed to meet its burden of proof to establish that a 1.85 OTIER

⁹⁸See Federal Reserve, Report on Economic Well-Being of U.S. Households in 2022 – May 2023, <https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-banking-credit.htm>.

⁹⁹ *Id.*

¹⁰⁰ *Id.* The Federal Reserve publication further states that unbanked rates are higher among adults with lower income.

¹⁰¹See <https://www.duke-energy.com/home/billing/billing-payment-options> (Duke Energy Kentucky assesses a “small fee” to a residential customer paying a utility bill with a credit card, debit card, or electronic check.); <https://www.amwater.com/kyaw/customer-service-billing/billing-payment-info/> (Kentucky-American Water assesses a \$1.95 fee to a customer using a credit card to pay the utility bill); <https://www.kentuckypower.com/account/bills/pay/compare> (Kentucky Power Company assesses a \$1.85 fee for a residential customer to pay a utility bill with a credit card, debit card, or ATM card.); <https://lge-ku.com/residential/payment> (Louisville Gas and Electric and Kentucky Utilities charge an additional fee to a residential customer paying a utility bill with a credit card, PayPal, Amazon Pay, or Venmo.); <https://www.columbiagasky.com/bills-and-payments/pay-my-bill> (Columbia Gas of Kentucky assesses a \$2.00 fee to a residential customer paying a utility bill with a credit card, debit card, PayPal, Venmo, or Amazon Pay); <https://mountainwaterdistrictky.com/Default.aspx> (Mountain Water District assesses a \$2.00 fee to a residential customer paying a utility bill with a credit card, and a \$1.50 fee to use an e-check.)

¹⁰² See Case No. 2023-00158, *Electronic Application of Farmers Rural Electric Cooperative Corporation for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407* (Ky. PSC Oct. 3, 2023), Order at 12.

will lead to fair, just, and reasonable rates.¹⁰³ First, Taylor County RECC provides no analytical support for its proposed OTIER.¹⁰⁴ Instead, the Company states that, “[t]he Commission also established the OTIER cap of 1.85 for cooperatives using the Streamlined Procedure Pilot Program, which indicates an expectation by this Commission that cooperatives like Taylor County RECC should achieve financial metrics above the minimum thresholds established by the lenders.”¹⁰⁵ However, the Company failed to discuss the recent Order in which the Commission stated that, “the authorized TIER for an electric distribution cooperative will be addressed on a case by case basis, and the current interest rates for the cooperative and market conditions must be part of the consideration.”¹⁰⁶

Second, a 1.85 OTIER is excessive when compared to the financial and credit metrics required by the Company’s lenders. Taylor County RECC’s loan covenants for RUS loans require it to meet an average coverage ratio for the two best years out of the three most recent calendar years of a 1.25 TIER, 1.25 Debt Service Coverage (“DSC”) Ratio, and a 1.10 OTIER.¹⁰⁷

Third, in theory, if the Commission authorizes an excessive OTIER and TIER that provides excessive margins, it can be returned to customers through future capital credits. However, this is problematic because there is no tracking and no functional equivalence between excessive margins and future capital credits. Furthermore, any return of excess margins is likely to be diluted and delayed because customers stand at the end of the line for any residual revenues. In fact, any capital credit distributions to customers normally do not occur for decades.

¹⁰³ Application, paragraph 4.

¹⁰⁴ Taylor County RECC’s response to the Attorney General’s First Request, Items 29(d).

¹⁰⁵ *Id.*

¹⁰⁶ Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC June 30, 2022), Order at 18.

¹⁰⁷ Taylor County RECC’s response to the Attorney General’s First Request, Item 2(a); Taylor County RECC’s response to Staff’s Second Request, Item 9(b).

Fourth, the authorization of an excessive OTIER is a disincentive to controlling discretionary expenses such as employees' excess wages, salaries, raises, benefits, and the like. For example, even if the Commission disallows a certain percentage of funding of employee health insurance or the Company's 16% contribution rate to the 401(k) to be included in the rates, the Company can continue these practices because of the excess monies¹⁰⁸ awarded to it through a higher than necessary OTIER and TIER.

Based upon the foregoing, the Attorney General requests the Commission only award Taylor County RECC an OTIER and TIER that will lead to fair, just, and reasonable rates.

i. Rate Case Expense

Taylor County RECC proposes \$160,000 of rate case expense to be recovered through the rates, and amortized over a three-year period.¹⁰⁹ Besides a pass-through rate case that the Company filed with the Commission in Case No. 2021-00119,¹¹⁰ its last general rate case was filed over a decade ago in 2012.¹¹¹ Although the Company asserts that it anticipates filing rate cases more frequently than in the past,¹¹² it also acknowledges that it does not know when the next rate case will be filed.¹¹³ As the Attorney General's expert witness, Mr. Defever asserts in his testimony, the Company will continue to receive the amortization of the rate case expense in rates until it files the next rate case and rates are reset.¹¹⁴ Thus, the Attorney General recommends the Commission amortize the rate case expense over a six-year period, which is a reasonable recommendation when considering that the Company's last general rate case was filed over a decade ago. This

¹⁰⁸ See VTE 11:27:40 – 11:27:59.

¹⁰⁹ Wolfram Testimony, Exhibit JW-2, Schedule 1.13.

¹¹⁰ Case No. 2021-00119, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for Pass-Through of East Kentucky Power Cooperative, Inc. Wholesale Rate Adjustment* (Ky. PSC Sep. 30, 2021).

¹¹¹ Case No. 2012-00023, *Application of Taylor County Rural Electric Cooperative Corporation for an Adjustment of Rates* (KY. PSC Mar. 26, 2013).

¹¹² Taylor County RECC's response to the Attorney General's First Request, Item 20.

¹¹³ *Id.* at Item 117.

¹¹⁴ Defever Testimony at 17.

recommendation represents a reduction to the Company's request of \$26,666.¹¹⁵

Additionally, the Attorney General further requests the Commission only allow the Company to include actual rate case costs that are deemed reasonable and necessary, as opposed to estimated rate case costs, in the revenue requirement. Finally, in line with prior recommendations,¹¹⁶ and recent Commission precedent,¹¹⁷ the Attorney General requests that no costs associated with the cancelled September 26, 2023 public hearing be allowed inclusion in the rate case expense.

CONCLUSION

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

¹¹⁵ *Id.* at 18

¹¹⁶ See Case No. 2022-00372, *Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of Electric Rates; (2) Approval of new Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief*, Attorney General's Post-Hearing Brief at 58 – 60.

¹¹⁷ Case No. 2022-00372, *Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of Electric Rates; (2) Approval of new Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief* (Ky. PSC Oct. 12, 2023), Order at 19 – 20.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that the foregoing electronic filing was transmitted to the Commission on November 29, 2023, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 29th day of November, 2023,



Assistant Attorney General