

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF FARMERS RURAL)
ELECTRIC COOPERATIVE CORPORATION FOR A)
GENERAL ADJUSTMENT OF RATES PURSUANT TO) CASE NO. 2023-00158
STREAMLINED PROCEDURE PILOT PROGRAM)
ESTABLISHED IN CASE NO. 2018-00407)

ATTORNEY GENERAL’S COMMENTS

The intervenor, the Attorney General of the Commonwealth of Kentucky, 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

Farmers Rural Electric Cooperative Corporation (“Farmers RECC” or the “Company”), is a not-for-profit, member-owned rural electric distribution cooperative organized under KRS 279, and distributes retail electric power to approximately 26,452 member customers in the Kentucky counties of Adair, Barren, Edmonson, Grayson, Green, Hardin, Hart, Larue, Metcalfe, Monroe, and Warren.¹ The Company owns approximately 3,725 miles of distribution line in its service territory,² and purchases its power requirements from East Kentucky Power Cooperative, Inc. (“EKPC”).³ Farmers RECC is a utility subject to the rates and service jurisdiction of the Commission.

¹ Application, paragraph 1.

² Application, Exhibit 4.

³ See Direct Testimony of Tobias Moss (“Moss Testimony”), at 3.

On May 15, 2023, Farmers RECC filed its notice of intent to file an application for an adjustment of rates pursuant to the streamlined procedure pilot program. The Company subsequently filed its application on June 16, 2023, utilizing a historic test year ended December 31, 2022.⁴ The Commission issued deficiency Orders to Farmers RECC on June 30, 2023 and July 18, 2023, to which the Company filed responses. The Commission issued an Order on August 3, 2023, which deemed the application filed as of July 20, 2023. The Commission granted intervention to the Attorney General by Order on June 29, 2023.

In the application, Farmers RECC requests an increase in revenues totaling \$2,415,704 per year, or 3.99% over current revenues.⁵ Farmers RECC is also requesting to increase the residential monthly customer charge from \$14.49 to \$19.50,⁶ or a 34.58% increase. Pursuant to the streamlined procedure pilot program the Attorney General and Commission Staff each propounded one round of discovery to Farmers RECC, to which the Company filed responses on September 7, 2023. Following the submission of these comments, the case will stand submitted for a decision on the record on September 15, 2023.

ARGUMENT

Pursuant to KRS 278.190(3), Farmers RECC bears the burden of proof to demonstrate “that an increase of rate or charge is just and reasonable.”⁷ Farmers RECC has failed to meet its burden of proof to demonstrate that the requested revenue increase will result in fair, just, and reasonable rates.⁸ The Attorney General recommends a downward adjustment to the requested \$2,415,704

⁴ Application, Exhibit 5; Direct Testimony of John Wolfram (“Wolfram Testimony”), at 8.

⁵ Application, paragraph 5.

⁶ Application, Exhibit 4, Customer Notice.

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

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.”

revenue increase because approving the Company's application as is will result in unfair, unjust, and unreasonable rates due to the following issues.

I. Farmers RECC's proposal to increase the electric rates only on the residential customer class and to increase the residential monthly customer charge by 34.58% is unreasonable.

As aforementioned, Farmers RECC is requesting to increase its annual revenues by \$2,415,704 per year,⁹ but notably, the Company is not requesting to increase revenues or customer charges on any other class of customer besides the residential class.¹⁰ As previously discussed, with respect to the residential class, Farmers RECC proposes to increase its residential monthly customer charge from \$14.49 to \$19.50,¹¹ which equates to a 34.58% increase. An increase of this magnitude to the residential charge will hinder residential customers' ability to control their monthly electric bills, and pose a financial hardship on those customers struggling to make ends meet. If the Commission grants Farmers RECC's proposed \$19.50 residential monthly customer charge then the Company will have a higher customer charge than twelve other electric cooperatives in the Commonwealth, with only six electric cooperatives having a higher customer charge.¹²

It is important to note that the average poverty rate in Farmers RECC's service territory is 18.5%,¹³ with the highest poverty rate of 24.2% in Adair County¹⁴ and the lowest of 11.7% in

⁹ Application, paragraph 5.

¹⁰ Application, Exhibit 4, Customer Notice; Farmers RECC's response to the Attorney General's First Request for Information ("Attorney General's First Request"), Item 20(e).

¹¹ Application, Exhibit 4, Customer Notice.

¹² Farmers RECC's response to the Attorney General's First Request, Item 35.

¹³ See Farmers RECC's response to the Attorney General's First Request, Item 2(g); <https://www.census.gov/quickfacts/fact/table/greencountykentucky.graysoncountykentucky.edmonsoncountykentucky.barrencountykentucky.adaircountykentucky/PST045222>; <https://www.census.gov/quickfacts/fact/table/warrencountykentucky.monroecountykentucky.metcalfecountykentucky.laruecountykentucky.hartcountykentucky.hardincountykentucky/PST045222>.

¹⁴ <https://www.census.gov/quickfacts/fact/table/greencountykentucky.graysoncountykentucky.edmonsoncountykentucky.barrencountykentucky.adaircountykentucky/PST045222>.

Hardin County.¹⁵ The Company acknowledges that it is aware of the high poverty rates in its service territory.¹⁶ Farmers RECC also admits that its customers have experienced tightening financial conditions that have weighed heavily on them due to inflationary issues, including household staples such as milk, eggs, and gasoline costs increasing up to 145%.¹⁷ Due to the existing poverty and difficult economic conditions, the Attorney General appeals to the Commission to employ gradualism when awarding any increase in Farmers RECC's residential monthly customer charge. The Commission has always relied upon the principle of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers.¹⁸ Farmers RECC's proposed 34.58% increase to the residential monthly customer charge violates this important ratemaking principle.

If the Commission were to grant Farmers RECC's requested \$19.50 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 \$17.00 in the first year, and then under the second phase increase to \$19.50 in the second year. This provides an opportunity for Farmers RECC's customers to absorb the higher monthly customer charge over a longer period of time, rather than immediately force customers to pay a 34.58% increase.

¹⁵<https://www.census.gov/quickfacts/fact/table/warrencountykentucky,monroecountykentucky,metcalfecountykentucky,laruecountykentucky,hartcountykentucky,hardincountykentucky/PST045222>.

¹⁶ Farmers RECC's response to the Attorney General's First Request, Item 2(g).

¹⁷ Moss Testimony at 5; Farmers RECC's response to the Attorney General's First Request, Items 2(a) and 24.

¹⁸ 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; (3) 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.")

Moreover, if the Commission approves the requested increase to the residential monthly customer charge, due to Farmers RECC requesting for the rate increase to only be applied to the residential class,¹⁹ the residential customers will be paying slightly less than the current \$22.07 monthly customer charge for the commercial and industrial rate class using less than 50 kWh per month.²⁰ However, the residential class will be paying a higher energy charge than the commercial and industrial rate class using less than 50 kWh per month - \$0.090673 per kWh versus \$0.082796 per kWh, respectively.²¹ 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.²² The Attorney General is concerned that the Company's proposed monthly customer charge for the residential class being close to that paid by the commercial and industrial class, coupled with the higher proposed energy charge for the residential class than the commercial and industrial classes, 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. 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 100% of the rate increase being placed on the residential class.

¹⁹ Farmers RECC's response to the Attorney General's First Request, Item 20(e).

²⁰ Application, Exhibit 4, Customer Notice; Farmers RECC's response to the Attorney General's First Request, Item 20(g).

²¹ Application, Exhibit 4, Customer Notice; Farmers RECC's response to the Attorney General's First Request, Item 20(g).

²² 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.

II. The Commission should only allow what is reasonable when evaluating Farmers RECC's employee compensation and benefit plans.

In discovery, the Attorney General requested a substantial amount of information concerning the Company's employee salaries/wages, raises, awards, and benefits. However, Farmers RECC filed the vast majority of the associated discovery responses under a petition for confidentiality.²³ As such, the Attorney General is limited as to the issues that can be discussed in this public filing, but will address all issues that are not subject to the pending confidentiality petition below.

First, Farmers RECC's prior chief executive officer's ("CEO") annual salary and benefits increased from \$284,197 in 2021 to \$297,623 in 2022.²⁴ The newly hired CEO's projected total benefits for 2023 is \$267,500.²⁵ The Attorney General requests the Commission to evaluate and determine whether it is reasonable to pay the CEO of a not-for-profit rural electric cooperative that provides electricity to only 26,452 customers almost \$300,000 in total benefits. Farmers RECC also appears to provide a Supplemental Executive Retirement Plan ("SERP") to a select group of management employees, which the Commission traditionally excludes from rates.²⁶

Second, Farmers RECC only requires its employees to pay for 10% of their health insurance premium costs for all coverages, including single and family coverage. In other words, the Company (i.e. the customers) pays for 90% of the employee health insurance premium costs.²⁷ 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

²³ Farmers RECC's response to the Attorney General's First Request, Items 3 and 4; *See* Farmers RECC's Motion for Confidential Treatment filed with the Commission on September 7, 2022.

²⁴ Farmers RECC's response to the Attorney General's First Request, Item 22(a).

²⁵ *Id.* at Item 22(b).

²⁶ *Id.* at Items 59(a), (b), and (c); *See* Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 27.

²⁷ Farmers RECC's response to the Attorney General's First Request, Item 45(a).

single and family coverage in order to rein in benefit expenses.²⁸ The BLS 2022 averages for single and family coverages are 78% and 67%, respectively.²⁹ When compared to the BLS 2022 averages, Farmers RECC is contributing 12% more to health insurance premiums for single coverage, and 23% more in family health insurance premiums.

Third, for employees hired before January 1, 2012, the Company provides 100% of the contribution for employee retirement through the National Rural Electric Cooperative Association (“NRECA”) Retirement and Security plan, which means the employees do not contribute to their retirement plan.³⁰ For employees hired before January 1, 2012, Farmers RECC also contributes to the employee 401(k) at 100% of the employee elective contribution of 0.5% to 1.0% of the employee’s compensation.³¹ For employees hired after January 1, 2012, Farmers RECC contributes an amount equal to 100% of the employee elective contributions of 1% to 4% of the employee’s compensation.³² The Company states that after an employee completes one year of eligibility service, the Company contributes a base contribution to the 401(k) equal to 6% of the employee’s compensation.³³

Based upon the foregoing, the Attorney General requests the Commission to review and evaluate Farmers RECC’s compensation and benefit plans and only allow what is reasonable, which will lead to fair, just, and reasonable rates.

²⁸See 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.

²⁹Bureau of Labor Statistics, Employee Benefits, March 2022, Table 3, private industry workers, https://www.bls.gov/news.release/archives/ebs2_09222022.htm; Bureau of Labor Statistics, Employee Benefits, March 2022, Table 4, private industry workers, https://www.bls.gov/news.release/archives/ebs2_09222022.htm; Farmers RECC’s response to the Attorney General’s First Request, Items 37 (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.

³⁰Farmers RECC’s response to the Attorney General’s Request, Items 31(a) and 38(a).

³¹*Id.* at Item 31(a).

³²*Id.*

³³*Id.* at Item 39(a).

III. Farmers RECC should be required to reduce its miscellaneous expenses.

In the 2022 test year, Farmers RECC spent \$284,932 in meeting costs, donations, dues, and community support.³⁴ Even if some of these expenses are being excluded from rates, it does not change the fact that the expenses are still being paid with customer funds. As has been acknowledged in the past, the main revenue stream that a rural electric cooperative has is from the customers.³⁵ Thus, Farmers RECC needs to rein in these miscellaneous expenses moving forward in order to stave off further rate increases. The Company should work to better utilize their customers' money by reducing expenditures that are not directly related to providing safe and reliable electric service. Due to the high poverty rates that exist in Farmers RECC's service area, coupled with the ongoing inflationary issues, the Company's customers have been required to cut expenditures. Likewise, Farmers RECC needs to do the same.

IV. All costs associated with the Company's vacant and unfilled position should be disallowed from the revenue requirement.

In discovery responses to the Attorney General, the Company admits that there is currently a vacant and unfilled engineering manager position.³⁶ Even though the engineering manager position is vacant, Farmers RECC included all costs associated with this position in the revenue requirement.³⁷ The Attorney General requested Farmers RECC to provide information concerning the vacant position including the annual salary and the planned hiring date, but the requested information was not provided.³⁸ Instead, Farmers RECC states that it, "did not apply a vacancy adjustment to payroll expense" because to the Company's understanding it would be "atypical" to

³⁴ *Id.* at Item 30.

³⁵ *See* Case No. 2016-00077, Licking Valley RECC's response to the Attorney General's Second Request for Information, Item 5.

³⁶ Farmers RECC's response to the Attorney General's First Request, Item 46.

³⁷ *Id.*

³⁸ *Id.*

do so.³⁹

Because the engineering manager position is currently vacant, and is therefore providing no benefit to the customers or to the provision of safe and reliable electric service, it would be unfair to require Farmers RECC's customers to pay an electric rate that includes the salary and benefits associated with this vacant position. Hence, the Attorney General requests the removal of costs associated with the vacant position from the requested rate increase because there is no guarantee that the position will be filled.

V. The Commission should deny Farmers RECC's request to more than double the right-of-way expense that is included in the revenue requirement.

Farmers RECC's test year right-of-way expense is \$1,015,237.⁴⁰ In the pending case, the Company proposes to more than double its right-of-way expense by making a pro forma adjustment of \$1,284,763 to the test year expense, for a total of \$2,300,000 in right-of-way expense.⁴¹ Farmers RECC contends that the cost for right-of-way contractors have increased, with the price per mile having risen by 32% since 2017.⁴² The Company asserts that in 2017, Farmers RECC paid \$2,251 per mile for right-of-way clearing, but in the test year the cost totaled \$2,982 per mile.⁴³ However, when reviewing the right-of-way costs in the test year, as well as the years prior to the test year, the Company never spent close to the proposed \$2.3 million dollars.⁴⁴ For example, the average of the right-of-way expense from the past three years (2020, 2021, and the 2022 test year) equates to \$1,399,540 per year.⁴⁵ A further concern of awarding Farmers RECC the requested \$2.3 million dollars in right-of-way expense is that the Company admits that it has

³⁹ *Id.*

⁴⁰ Wolfram Testimony, Exhibit JW-2, Reference Schedule 1.05.

⁴¹ *Id.*; Wolfram Testimony, Exhibit JW-2, page 2 of 27.

⁴² Farmers RECC response to the Attorney General's First Request, Item 25(b).

⁴³ *Id.*

⁴⁴ *Id.* at Item 25, Excel Spreadsheet.

⁴⁵ *Id.*

had to “pare back the ROW trimming to preserve margins” in the past.⁴⁶ In fact, six out of the ten years in between 2012 – 2022, Farmers RECC did not actually spend the budgeted right-of-way maintenance expense.⁴⁷ Yet, it does not appear that the Company equally pared back employee compensation and benefits during this same timeframe.⁴⁸ It is important to note that if the Commission approves the more than doubling of the right-of-way expense then the Company will continue to receive the full \$2.3 million every year until rates are reset, regardless of whether or not the funds are used for right-of-way clearing. Thus, the Attorney General recommends basing the right-of-way expense upon the Company’s actual expenditures from the past three years (2020, 2021, and 2022), the average of which equates to \$1,399,540.

In the face of the rising right-of-way costs, Farmers RECC acknowledges that it does not work with other regional electric utilities, such as Taylor County Rural Electric Cooperative Corporation (“Taylor County RECC”) and South Kentucky Rural Electric Cooperative Corporation (“South Kentucky RECC”), to develop regional bids for right-of-way management, which could create significant cost savings.⁴⁹ 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.⁵⁰ The Attorney General requests for the Commission to require Farmers 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 right-of-way expense that

⁴⁶ Farmers RECC’s response to the Attorney General’s First Request, Item 25(o); Farmers RECC’s response to the Commission Staff’s First Request for Information (“Staff’s First Request”), Item 2(e).

⁴⁷ Farmers RECC’s response to the Attorney General’s First Request, Item 25, Excel Spreadsheet.

⁴⁸ Farmers RECC’s response to the Attorney General’s First Request, Items 22(a), 22(b), 38(a), 39(a), 43, 44(b), 45(a), 45(b), and 59(a).

⁴⁹ *Id.* at Item 25(f); 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.

⁵⁰ Farmers RECC’s response to the Attorney General’s First Request, Item 25(h).

the Company's customers pay for through electric rates.

VI. Farmers RECC's income should be included in the pending rate case to offset the proposed rate increase.

Farmers RECC does not include any propane income, interest income, or any other revenue generating income in the pending rate increase case, even though the income should offset some portion of the requested rate increase.⁵¹ The Company asserts that income was not included in the streamlined case because it is not "in the formula for OTIER" and therefore the income should not be considered.⁵² For example, Farmers RECC owns Farmers Energy Propane Plus, LLC ("Farmers Propane"), which sells propane and related accessories to residential and commercial customers in the surrounding counties.⁵³ Farmers RECC's propane income has risen from \$191,288 in 2020, to \$207,273 in 2021, and up to \$480,012 in 2022.⁵⁴ Yet, to the detriment of the customers, the Company did not include the propane income in the requested rate increase.⁵⁵ Similarly, Farmers RECC admits that it did not include any of the \$59,725 non-operating margins interest in the pending revenue increase request.⁵⁶ The Company's interest income on various CFC Commercial Paper programs, checking accounts, money market accounts, etc., should be included in the requested revenue increase to the benefit of the customers.

The Attorney General argues that it appears to be inequitable to allow Farmers RECC to make pro forma adjustments for increased expenses, but not simultaneously include the income that the utility receives, which should assist in offsetting some of the increased expenses. The Attorney General contends that the only way to set fair, just, and reasonable electric rates is to

⁵¹ *Id.* at Item 50(b); Farmers RECC's response to the Staff's First Request, Items 1 and 5(b).

⁵² Farmers RECC's response to the Attorney General's First Request, Item 50(b); Farmers RECC's response to the Staff's First Request, Items 1 and 5(b).

⁵³ Application, Exhibit 15.

⁵⁴ *Id.*

⁵⁵ Farmers RECC's response to the Attorney General's First Request, Item 50(b).

⁵⁶ Farmers RECC's response to the Staff's First Request, Items 5(a) and (b).

include all of Farmers RECC's income in the pending revenue request. The Attorney General therefore requests the Commission to include all of the Company's income when calculating the revenue requirement.

VII. Farmers RECC's processing fees for credit cards should be removed from the revenue requirement.

Farmers RECC paid \$217,667.91 in credit card processing fees in the test year.⁵⁷ 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."⁵⁸ By including the credit card processing fees in the revenue requirement the customers who are utilizing payment options that do not assess a corresponding fee, such as cash and checks, are subsidizing the customers who use a credit card, which requires the Company to pay a fee. By not requiring the customer to pay the associated processing fees for using credit cards, it is possible the Company is enticing customers to use credit cards in order to increase points and rewards associated with various credit card loyalty programs. Due to low-income customers having more difficulty obtaining credit cards and bank accounts,⁵⁹ the Attorney General is concerned that the inclusion of almost a quarter of a million dollars in credit card processing fees in the electric rates are being subsidized and borne by those customers who can least afford it.

The Attorney General requests that the Commission remove the credit card processing fees of \$217,667.91 from the revenue requirement. Even if the credit card processing fees are removed, Farmers RECC can follow the example of other utilities by still allowing utility bills to be paid

⁵⁷ Farmers RECC's response to the Attorney General's First Request, Item 36(c).

⁵⁸ *Id.* at Item 36(f).

⁵⁹<https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-banking-and-credit.htm> (The publication states that almost all people with income over \$100,000 had a credit card, and most people with income over \$50,000 had a credit card, but at lower income levels, having a credit card was less common. The publication further states that unbanked and underbanked rates were higher among adults with lower income.)

with credit cards, etc. as long as the customer pays 100% of the corresponding fee that is assessed to the Company.⁶⁰

VIII. Farmers RECC’s rate case expense should be amortized over a five-year period instead of a three-year period.

Farmers RECC proposes \$70,000 of rate case expense to be recovered through the rates, and amortized over a three-year period.⁶¹ Besides a pass through rate case that the Company filed with the Commission in Case No. 2021-00108,⁶² its last general rate case was filed seven years ago in 2016.⁶³ Although the Company acknowledged that it anticipates filing rate cases at a “higher frequency” than in the past, it does not know when the next rate case will be filed. It is important to note that 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. Thus, the Attorney General recommends the Commission amortize the rate case expense over a five-year period, which is a reasonable recommendation when considering that the Company’s last general rate case was filed over seven years ago.

⁶⁰ See <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.)

⁶¹ Direct Testimony of Jennie Phelps (“Phelps Testimony”), at 9; Application, Exhibit 36; Farmers RECC’s response to the Attorney General’s First Request, Item 33(a).

⁶² Case No. 2021-00108, *Electronic Application of Farmers Rural Electric Cooperative Corporation for Pass-Through of East Kentucky Power Cooperative, Inc. Wholesale Rate Adjustment* (Ky. PSC Sept. 30, 2021).

⁶³ Case No. 2016-00365, *Application of Farmer Rural Electric Cooperative Corporation for an Increase in Retail Rates* (Ky. PSC May 12, 2017).

IX. A 1.51 OTIER and 1.86 TIER are not necessary for Farmers RECC to provide safe and reliable electric service.

Farmers RECC has failed to meet its burden of proof to establish that a 1.51 Operating Times Interest Earned Ratio (“OTIER”), and a 1.86 Times Interest Earned Ratio (“TIER”) will lead to fair, just, and reasonable rates.⁶⁴ First, Farmers RECC provides no analytical support for its proposed OTIER and TIER.⁶⁵ Instead, the Company states that, “[t]he Commission has found in repeated distribution cooperative rate filings in recent years that a TIER of 2.00 provides” a reasonable return.⁶⁶ Farmers RECC further 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 Farmers RECC should achieve financial metrics above the minimum thresholds established by the lenders.”⁶⁷ 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.”⁶⁸

Second, a 1.51 OTIER and 1.86 TIER is excessive when compared to the financial and credit metrics required by the Company’s lenders. Farmers 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.⁶⁹

⁶⁴ Application, paragraph 5; Farmers RECC’s response to the Attorney General’s First Request, Item 17(c).

⁶⁵ Farmers RECC’s response to the Attorney General’s First Request, Items 28(c) and (d).

⁶⁶ *Id.* at Item 28(d).

⁶⁷ *Id.*

⁶⁸ 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.

⁶⁹ Farmers RECC’s response to the Staff’s First Request, Item 13.

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.⁷⁰ However, this is problematic because there is no tracking and no functional equivalence between excessive margins and future capital credits.⁷¹ 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 that make it to the Company's net margins that are potentially available for any future capital credits. In fact, any capital credit distributions to customers normally do not occur for decades.⁷²

Fourth, the authorization of an excessive OTIER and TIER is a disincentive to control 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 contributions to both a pension and 401(k) to be included in the rates, the Company can continue these practices because of the excess monies awarded to it through a higher than necessary OTIER and TIER.

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

X. Farmers RECC should take steps to resolve its conflict of interest that the Nepotism Policy does not rectify.

Farmers RECC's service manager, who was hired in 1992, is the son-in-law of a member of the Board of Directors who was appointed in 2006.⁷³ Although Farmers RECC established a Nepotism Policy in 2017,⁷⁴ it does not cover this preexisting conflict of interest. This conflict of interest is concerning because the Board of Directors have the duty to make decisions that directly

⁷⁰ Farmers RECC's response to the Attorney General's First Request, Items 14(a) and (b).

⁷¹ See Farmers RECC's response to the Attorney General's First Request, Item 28(d).

⁷² See Farmers RECC's response to the Attorney General's First Request, Item 51, Board of Director Meeting Minutes.

⁷³ Farmers response to the Attorney General's First Request, Item 62(a).

⁷⁴ *Id.* at Item 62(c).

affect the employees such as determining and approving annual raises, benefit packages, awards, etc. When a member of the Board of Directors is tasked with voting on issues that directly affect his family members in a beneficial or detrimental way, not only does the appearance of a conflict of interest exist, but an actual conflict of interest exists as well. Thus, the Attorney General requests the Commission to recommend that Farmers RECC take the proper steps to resolve this conflict of interest that the Nepotism Policy of 2017 does not rectify.

CONCLUSION

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

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 September 14, 2023, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 14th day of September, 2023,



Assistant Attorney General