

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF SHELBY ENERGY)	
COOPERATIVE, INC. FOR A GENERAL ADJUSTMENT OF)	CASE NO.
RATES PURSUANT TO STREAMLINED PROCEDURE PILOT)	2023-00213
PROGRAM ESTABLISHED IN CASE NO. 2018-00407)	

MOTION FOR REHEARING

Comes now Shelby Energy Cooperative, Inc., (“Shelby Energy”) by and through counsel, pursuant to KRS 278.400 and respectfully requests the Kentucky Public Service Commission (“Commission”) to grant rehearing on its October 17, 2023 Order (“October 17th Order”) in the above-styled case. In support of this motion, Shelby Energy respectfully states as follows:

1. On August 4, 2023, Shelby Energy filed an Application for a general adjustment of rates pursuant to the streamlined procedures established in Case No. 2018, 00407.¹
2. The Commission issued an Order on August 17, 2023 accepting Shelby Energy’s Application to proceed under the streamlined procedures.
3. Commission Staff issued data requests to Shelby Energy on August 28, 2023 and the Attorney General’s Office of Rate Intervention (“AG”) issued data requests to Shelby Energy on August 29, 2023 to which Shelby Energy filed responses on September 12, 2023.
4. Comments were filed by the AG and Shelby Energy on September 19, 2023.

¹ See, *In the Matter of: A Review of the Rate Case Procedure for Electric Distribution Cooperatives*, Case No. 2018-00407, (Ky. P.S.C., Dec. 20, 2019). (“Streamlined Rate Order”)

5. The Commission’s October 17th Order accepted 13 of Shelby Energy’s 14 proposed adjustments. The adjustment that was not accepted by the Commission was the adjustment for interest expense. Shelby Energy requested to increase the test-year expense by \$398,879 to include the interest on two advances from RUS of long-term debt from May 2023 and August 2023, short-term lines of credit from 2023 and consumer deposits.² The Commission’s October 17th Order found “only the December 31, 2022 ending balance and the 2023 rate for consumer deposits should be reflected in the interest expense adjustment, for a total increase of \$91,369.” The reason given by the Commission for disallowing the other known and measurable changes to interest expense was that they “were determined well after the end of the test-year and should not be included.” However, the Commission does not state how far outside the test-year these amounts would be considered. One of the long-term debt advances from RUS was taken only five months after the test-year. The interest expense is known and measurable, which is the standard for the test-year adjustments. In fact, the Commission found in Case No. 2021-00358 that the interest expense on long-term RUS debt was recoverable even though it occurred years outside the test year.³ In that case, the proposed test period was the 12-month period ending December 31, 2019.⁴ Jackson Purchase included an estimate of interest expense on a RUS loan, which Jackson Purchase revised its revenue requirement in discovery requests and updated interest expense for the RUS loan that closed in November 2021 and eliminated short term interest expense.⁵ The RUS loan closed two years after the close of the test period. The Commission stated:

² See, Shelby Energy’s Response to Staff’s First Request, Item 7(c).

³ See, *In the Matter of: Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief*, Case No. 2021-00358, Order (Ky. P.S.C. Apr. 8, 2022).

⁴ See, *id.* at 3.

⁵ See, *id.* at 14-15.

The Commission notes that the RUS borrowing was a large, foreseeable expense that would have a material impact on the test period in this case. The amounts that were expensed for distribution projects are incidental to the overarching need to borrow the funds to pay off the line of credit agreement with CoBank, and that when the amounts that were estimated in the application became known and measurable, Jackson Purchase presented the information and revised its request. For these reasons, the Commission finds that the interest expense proposed by Jackson Purchase, alongside the reduction in short term interest is reasonable and is accepted.⁶

The interest expense for the draw downs from RUS by Shelby Energy in 2023, were a large foreseeable expense that would have a material impact on the test period in this proceeding. They occurred less than a year after the end of the test period and were known and measurable. As the Commission found in Case No. 2021-00358, the interest expense included by Shelby Energy is reasonable and should be accepted. Interest expense is one of the largest expenses incurred by a cooperative such as Shelby Energy. With interest rates continuing to increase, this is a large expense for Shelby Energy. Shelby Energy requests the Commission to reconsider the exclusion of the known and measurable changes in the interest expense. Please see the Excel spreadsheet, Rehearing Revised Interest Expense Adjustment – Paragraph 5, which is being uploaded into the Commission’s electronic tariff system contemporaneously with this Motion, for the supporting calculation for the inclusion of the interest expense on RUS long-term debt and removing the interest expense on the short-term that was paid off with the RUS funds.

6. Should the Commission deny Shelby Energy’s Motion for rehearing to include the interest expense proposed by Shelby Energy, Shelby Energy requests rehearing on the portion of the Commission’s Order that contained material errors in the calculation of the interest expense that was excluded from Shelby Energy’s rates. Shelby Energy has calculated the 2023 interest expense using the amortization schedules of the individual loans that were outstanding as of

⁶ See, *id.* 15-16.

December 31, 2022. The increase in interest expense on long-term debt plus the increase in consumer deposit interest results in a total increase in interest expense of \$134,891 over the test-year amount. Shelby Energy attaches a revised schedule (updating that provided in Wolfram Direct, Exhibit JW-2, Reference Schedule 1.08) as well as the supporting calculations. The October 17th Order's adjustment to interest expense does not take into account principal payments during the year or the 12.5 basis points that Federal Financing Bank charges on loans, which makes up the difference between the October 17th Order's adjustment of \$91,369 and Shelby Energy's adjustment of \$134,891 as shown in revised Exhibit JW-2, Reference Schedule 1.08. Shelby Energy is uploading contemporaneously with this Motion an Excel spreadsheet, 2023 Long Term Debt Interest Expense Detail, which shows the schedule with amortization schedules as support for the calculation of 2023 interest expense. In addition to supporting the 2023 interest expense of \$2,205,533, the 2023 Long Term Debt Interest Expense Detail schedule also shows the total interest expense with the 2023 RUS loan advances included, which totals \$2,381,578. The principal amounts and interest rates of the 2023 RUS loan advances are known and measurable as of the date of this motion. Please see the Excel spreadsheet attachment, Rehearing Revised Interest Expense Adjustment – Paragraph 6, that is being uploaded into the Commission electronic filing system contemporaneously with this Motion to see the calculations that support the arguments set forth in this paragraph.

7. Shelby Energy also requests rehearing on the Commission's Order basing the requested increase on a 2.0 TIER instead of the 1.85 OTIER that was established in the streamlined procedures. When the streamlined procedures were drafted, the Commission stated that the rates could not result in an OTIER greater than a 1.85. There was no mention of the maximum TIER number that could result. Shelby Energy filed its Application, based on the Commission's

streamlined procedures, which were established for rates to be based on a maximum 1.85 OTIER. The rates proposed by Shelby Energy would not result in an OTIER greater than 1.85. The Commission has consistently noted the 1.85 OTIER calculation in prior streamlined rate proceedings. In Case No. 2020-00104⁷, Clark Energy only requested a 2.00 percent increase, or an OTIER of 1.77. The Commission stated, “The streamlined procedure allows for an increase in rate revenues of up to 4.00 percent increase or a 1.85 OTIER.”⁸ The Commission determined that:

Based upon the pro forma adjustments found reasonable herein, the Commission has determined that an increase in revenues from base rates of \$1,054,917 **would result in an OTIER of 1.85**. Although the Commission appreciates Clark Energy’s concern of the rate impact upon its members, the Commission also supports healthy financial metrics that ensure a member-owned cooperative is able to adequately and reasonably serve its members.⁹ (**emphasis added**)

The Commission clearly based the rate increase on the maximum 1.85 OTIER as outlined in the Commission’s streamlined procedures. Clark Energy’s board had chosen to impose a 2.00 percent cap on the increase which led to a 1.77 OTIER.¹⁰ The Commission realized the Clark Energy could support a higher increase and granted the rates that resulted in an OTIER of 1.85 (the maximum OTIER allowed in the streamlined procedures), stating “the Commission finds that granting an increase that results in a test-year OTIER of 1.85 is prudent and ultimately in Clark Energy’s member’s long-term best interest”.¹¹

⁷ *In the Matter of: Electronic Application of Clark Energy Cooperative, Inc., for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, (Ky. P.S.C. Aug 11, 2020).

⁸ *See, id.* at p. 10.

⁹ *See, id.*

¹⁰ *See, id.*

¹¹ *See, id.* at 11.

8. In addition to the Clark Energy case, the Commission stated in Case No. 2020-00338 as follows:

The Streamlined Rate Order set a cap on the amount of increase to the lower of an OTIER of 1.85 and the overall increase of 0.75 percent per year since the last rate increase. Pursuant to that annual cap, Licking Valley RECC proposed that the increase would be limited to an overall increase of 2.25 percent, or \$596,421, as under a 1.85 TIER the as filed revenue deficiency is \$1,095,880. The Commission finds that because Licking Valley RECC last received a rate increase on March 1, 2017, the allowed increase should be capped at the lower of an OTIER of 1.85 and the overall increase of 3.00 percent. Based upon the pro forma adjustments found reasonable herein, the Commission has determined that an increase in revenues from base rates of \$795,228 would result in an OTIER of 1.58. The Commission notes that given the information currently available, if Licking Valley RECC had filed as a traditional rate case and based upon an OTIER of 1.85, the increase would be \$1,025,946.¹²

The Commission went on to say “[b]y design, the Commission’s streamlined procedure limits increases, both in terms of OTIER and relative to current rates on a percentage basis.”¹³ Clearly, until the recent streamlined rate proceeding orders, the Commission consistently based the increase on the lower of a 1.85 OTIER or the 4.0 percent cap (0.75 percent annually). The streamlined procedures set forth this standard and should be followed by this Commission, as has been consistently applied since the first streamlined proceedings filed in 2019.

9. The Commission also recognized the 1.85 OTIER standard for the streamlined procedures in Case No. 2020-00264.¹⁴ “The Streamlined Rate Order set a cap on the amount of

¹² See, *In the Matter of: Electronic Application of Licking Valley Rural Electric Cooperative Corporation for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, Case No. 2020-00338, Order, p. 9 (Ky. P.S.C., April 8, 2021).

¹³ See, *id.* at 16.

¹⁴ See, *In the Matter of: Electronic Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, Order, p. 7, (Dec. 30, 2020).

increase to the lower of an OTIER of 1.85 and the overall increase of 0.75 percent per year since the last rate increase.”¹⁵ There is no mention of calculating the rate increase on a 2.0 TIER, or the lesser of a 1.85 OTIER or a 2.0 TIER which was the standard essentially applied by the Commission in the present case.

10. The Commission’s change in this proceeding to calculate the proposed rate increase on a 2.0 TIER alters the streamlined procedure without notice and materially damages the utility by changing the rules or allowable calculations in ongoing matter. This change amounts to “changing horses in midstream” or “moving the goalposts” with respect to the streamlined procedures understood by the cooperative when it elected to file the instant case. The Commission is eliminating the benefits of choosing the streamlined procedure and costing the cooperative, and ultimately its members, a significant amount of money by ignoring the policy decisions and costs of pursuing the streamlined rate filing. When the Commission does not follow the process or parameters known to the cooperative, it causes the cooperative to essentially waste the time and expense of a streamlined case and may force the cooperative to pursue a full rate case almost immediately. If Shelby Energy had been aware that the Commission was going to change to a calculation based on TIER instead of OTIER, Shelby Energy would have adopted a different approach to the streamlined rate filing. With the filed set of pro forma adjustments, Shelby Energy’s revenue deficiency at a 1.85 OTIER was \$2,442,669, or a 4.48 percent overall increase. At a TIER of 2.0, the deficiency was \$1,911,243, or a 3.50 percent overall increase. This matters because the streamlined process imposes a cap on the overall increase at 4 percent. At a 1.85 OTIER, Shelby Energy was *over* the 4 percent cap; they elected to file knowing that an increase of 4 percent was possible. Because they were above the cap, they also did not explore any

¹⁵ See, *id.* at pp. 7-8.

additional pro forma adjustments, and in fact had \$261,0312 of “cushion” above the 4 percent cap in case the Commission disallowed any expense. But at 2.0 TIER, with those same pro forma adjustments Shelby Energy would be *below* the 4 percent cap, and thus may have elected not to file the case given that the increase of 4 percent was not possible. Alternatively, if they expected that a 2.0 TIER would be the basis for determining revenue requirements, they could have explored other pro forma adjustments in order to support additional “cushion” in case the Commission disallowed any expense. Switching from the use of OTIER to the use of TIER in the Commission Order denied Shelby Energy the opportunity to make these strategic decisions.

11. The Commission’s use of TIER instead of OTIER increases the uncertainty and unpredictability of the entire streamlined process for rate filings and will have a chilling effect on other cooperatives considering the streamlined process. This hinders the goals of reducing rate case expense to the distribution cooperatives and their members, encouraging distribution cooperatives to make more frequent, smaller rate adjustments as needed, avoiding or diminishing any rate shock that may result from large infrequent rate increases, and reducing the strain on Commission resources. It undermines the objectives of the streamlined rate pilot program by increasing the uncertainty of the process.

12. When the streamlined procedures were established and the 1.85 maximum OTIER was set, the Commission would have been aware that most of the electric cooperatives in the state have non-utility income, but still based the streamlined procedures on a maximum 1.85 OTIER. These non-utility income amounts are not included in an OTIER calculation, which the Commission was also aware of when the streamlined procedures were established. While the net income from the propane business is recorded on Shelby Energy’s books, the cash flow to Shelby Energy is limited. The propane business carries no long-term debt and funds all capital

expenditures out of its operating income. As such, the cash flow to Shelby Energy is substantially less than the net income booked from the propane subsidiary. For this reason the Commission should maintain the use of OTIER and not TIER for determining revenue requirements in streamlined rate filings.

13. Shelby Energy also requests rehearing on the adjustments made by the Commission to the medical insurance premiums. In the streamlined procedures, a pro forma adjustment is required if the employee health care insurance premium contribution is zero.¹⁶ In this case it is not, and thus an adjustment is not required. Also, according to prior Commission Orders,¹⁷ an adjustment of medical premiums to the BLS levels is not necessary if the employees pay at least 12% of the medical premiums. The Commission adjusted the premium contributions of all of Shelby Energy's employees to the BLS levels. However, Shelby Energy's union employees contribute more than 12% of their medical premiums.¹⁸ Shelby Energy requests rehearing on the adjustment to BLS levels since the employee contribution is not zero. In the least, the Commission should reverse its decision on the inclusion of the union employees' medical premiums. This would result in an adjustment of \$57,305.

14. Shelby Energy's rate application was filed due to its financial condition, which has been exacerbated by increase costs in all areas of its business, increased interest rates, and the under-recovery of environmental surcharge amounts which continue to increase absent any orders

¹⁶ See, Streamlined Rate Order, Appendix A, Item 2.

¹⁷ See, *In the Matter of: 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*, Case No. 2023-00158, Order p. 10, (Ky. P.S.C. Oct. 3, 2023); See also, *In the Matter of: Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment in Existing Rates*, Case No. 2019-00053, Order p. 9, (Ky. P.S.C. June 20, 2019).

¹⁸ See, Shelby Energy's Response to Commission Staff's First Request for Information Item 9 Excel Attachment (filed Sept. 12, 2023).

from the Commission. Shelby Energy currently is \$1,024,893 under-recovered in environmental surcharge revenues, of which \$768,192 is related to the period from November 2019 to November 2021 and is included in Case No. 2022-00141 that was submitted for a decision based on the record in August 2022. The change by the Commission to base the proposed increase on a TIER instead of an OTIER calculation eliminated \$1,005,021 from Shelby Energy's proposed increase. This will force Shelby Energy to come back to the Commission almost immediately to request an increase to its rates, to include additional amounts that were not included in the present Application and use a 2023 test-year to include the additional interest expense. Shelby Energy's September 2023 year-to-date operating margins are a loss of (\$1,325,541) resulting in an OTIER of 0.24, and year-to-date margins are a loss of (\$719,863) resulting in a TIER of 0.59. Applying the Commission order's proposed rate increase to 2023 YTD financial results would produce operating margins of approximately (\$438,199) and margins of approximately \$167,479. These margins would produce an OTIER of 0.75 and a TIER of 1.10, both of which are less than the minimums required by RUS and CFC loan covenants. A second rate case with a 2023 test-year would ultimately warrant approximately \$2,000,000 of additional increase in total revenue above the instant case. Shelby Energy's requested increase in the streamlined case provides a more gradual approach to rate adjustments than the alternative of the Commission's proposed 2023 rate increase followed by an additional rate case in 2024.

WHEREFORE, on the basis of the foregoing, Shelby Energy respectfully requests that the Commission grant rehearing on the issues contained herein.

Dated this 6th day of November, 2023.

Respectfully submitted,

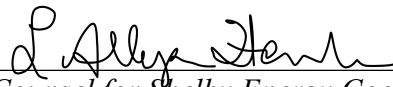


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CERTIFICATE OF SERVICE

This is to certify that foregoing was submitted electronically to the Commission on November 6, 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 Shelby Energy Cooperative, Inc.