

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**ELECTRONIC APPLICATION OF SHELBY )  
ENERGY COOPERATIVE FOR A GENERAL ) Case No. 2023-00213  
ADJUSTMENT OF RATES PURSUANT TO )  
STREAMLINE PROCEDURE PILOT PROGRAM )  
ESTABLISHED IN CASE NO. 2018-00407 )**

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**ATTORNEY GENERAL’S COMMENTS**

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The intervenor in this proceeding, 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**

Shelby Energy Cooperative Corporation (hereinafter “Shelby Energy” or the “Company”), is a not-for-profit electric cooperative organized under KRS Chapter 279.<sup>1</sup> It provides distribution electric service to approximately 13,960 members in Anderson, Carroll, Franklin, Henry, Jefferson, Oldham, Owen, Shelby, Spencer, and Trimble.<sup>2</sup> On August 4, 2023, Shelby Energy filed an application for an adjustment in rates (the “Application”), pursuant to the pilot program established by the Commission in Case No. 2018-00407. Specifically, Shelby Energy is requesting to increase its annual revenues by \$2,179,595, to achieve an Operating Times Interest Earned Ratio (“OTIER”) of 1.75,<sup>3</sup> which equates to a Times Interest Earned Ratio (“TIER”) of 2.21.<sup>4</sup>

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<sup>1</sup> Application at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Shelby Energy’s response to the Attorney General’s First Request for Information (“Attorney General’s First Request”), Item 4(b).

Shelby Energy is also requesting to increase the residential monthly customer charge from \$15.48 to \$19.75.<sup>5</sup> Pursuant to the pilot program’s streamlined process, only one round of discovery was conducted, with Shelby Energy providing responses to the Attorney General’s and Commission Staff’s discovery requests on September 12, 2023. Following the submission of these comments, the case will stand submitted for a decision on the record.

## ARGUMENT

### **I. Shelby Energy’s income from Propane Plus should be included in its revenue for the purpose of establishing its revenue requirement.**

Shelby Energy owns and operates Shelby Energy Propane Plus, LLC (“Propane Plus”).<sup>6</sup> Propane Plus’s revenue has nearly doubled in the past two years. In its response to the Attorney General’s discovery, the Company states that the increased revenue is from good management practices and the closure or purchase of competitor propane companies in the area.<sup>7</sup> Further, the increase in customers and improved margins on propane sales have resulted in gross revenue increasing from \$430,563 in 2020, to \$590,455 in 2021, and to \$814,478 in 2022.<sup>8</sup> Propane Plus also has few expenses, approximately \$10,000 per year in each of the last three years.<sup>9</sup> While the Attorney General applauds Shelby Energy’s successful management of Propane Plus and its ability to vertically grow revenue, this amount nevertheless should be included in the Company’s revenue requirement analysis. This is consistent with the Commission’s Order in the Company’s last rate case, Case No. 2016-00434, holding that net income from propane sales should be utilized in establishing the revenue requirement as it is known and measurable and supported by audited

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<sup>5</sup> *Id.* at 40.

<sup>6</sup> Application at 255

<sup>7</sup> *Id.* at 23.

<sup>8</sup> *Id.* at 256

<sup>9</sup> *Id.*

financial statements.<sup>10</sup> And by its own admission, Shelby Energy notes that Propane Plus’s revenue has increased due, in part, to a decrease in area supply. This would suggest that Propane Plus sales are likely to at a minimum stay consistent. The Attorney General therefore requests that the Commission includes all of the Company’s income when calculating the revenue requirement.

**II. The Commission should only allow what is reasonable when evaluating Shelby Energy’s employee compensation and benefit plans.**

Shelby Energy’s president and chief executive officer’s (“CEO”) annual salary and benefits increased from \$183,832 in 2020, to \$211,142 in 2022.<sup>11</sup> This includes a 5% raise, and an approximately \$10,000 bonus each of the last two years.<sup>12</sup> The Attorney General requests that the Commission evaluate and determine whether this total compensation is reasonable for the CEO of a not-for-profit rural electric cooperative that provides electricity to only 13,960 ratepayers.

Further, Shelby Energy only requires its union employees to pay for 13% of their health insurance premium costs, and non-union employees to pay 10% of the same.<sup>13</sup> In other words, the Company (i.e. the customers) pays for 87% - 90% of the employee health insurance premium costs.<sup>14</sup> 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.<sup>15</sup> The BLS 2022 averages for single and family coverages are 78% and 67%, respectively.<sup>16</sup> Shelby Energy is contributing, in

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<sup>10</sup> Case No. 2016-00434, *Electronic Application of Shelby Energy Cooperative, Inc. for a General Adjustment in Existing Rates* (Ky. PSC July 21, 2017), Order at 10.

<sup>11</sup> Application at 277.

<sup>12</sup> *Id.*

<sup>13</sup> Shelby Energy’s response to the Attorney General’s First Request, Item 14.

<sup>14</sup> *Id.*

<sup>15</sup> 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.

<sup>16</sup> Bureau of Labor Statistics, Employee Benefits, March 2022, Table 3, private industry workers, [https://www.bls.gov/news.release/archives/ebs2\\_09222022.htm](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](https://www.bls.gov/news.release/archives/ebs2_09222022.htm); See

the aggregate, significantly more to health insurance premiums than the BLS 2022 average. Additionally, for employees hired before 2009, Shelby Energy contributes 100% to employee pension plans, and also contributes up to 2% of the employee's gross wages to the 401(k) plan.<sup>17</sup> For employees hired after 2009, the Company contributes to the 401(k) at an amount equal to 100% of the employee's elective contributions up to 12% of the employee's gross wages.<sup>18</sup> Shelby Energy also pays 100% of employee life insurance, which is two times the employee's base salary.<sup>19</sup> Shelby Energy also provides long-term disability coverage, employee assistance programs, and business travel insurance, all of which is 100% funded by the Company.<sup>20</sup>

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

**III. Shelby Energy's proposal to increase its residential monthly customer charge by 27.58% is unreasonable.**

Shelby Energy proposes to increase the residential monthly customer service charge from \$15.48 to \$19.75,<sup>21</sup> which equates to a 27.58% increase. An increase of this magnitude to the residential charge will hinder the residential customers' ability to control their monthly bills, and will pose a financial hardship on those customers who are already struggling to make ends meet.

The Commission has always relied upon the principle of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers.<sup>22</sup> Therefore, if the Commission

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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.

<sup>17</sup> Shelby Energy's response to the Attorney General's First Request, Item 14.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Application at 40.

<sup>22</sup> 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*

approves Shelby Energy's increase in rates, the Attorney General recommends placing the full increase on the residential energy charge, instead of the residential monthly customer service charge. If the awarded increase in rates were placed on the energy charge, then it would provide the ratepayers the ability to conserve electricity in order to better control the monthly bill.

In the alternative, the Attorney General proposes a two-phased approach for any increase in the residential customer charge. If the Commission were inclined to raise the residential monthly customer service charge as requested by Shelby Energy from \$15.48 to \$19.75, then the difference (\$4.27) should be implemented in two phases. A first phase would allow for the customer service charge to increase to \$17.58 in the first year, and then under the second phase the customer charge would increase to \$19.75 in the second year. This would at least provide an opportunity for Shelby Energy's customers to absorb the higher monthly customer charge over the course of a longer period of time, rather than to be subjected to an immediate increase of 27.58%. If the Commission does approve Shelby Energy's requested rate adjustment, then the Attorney General requests a more gradual increase in the residential monthly charge than the Company's one-time proposed 27.58% increase.

#### **IV. Shelby Energy should be required to reduce its miscellaneous expenses.**

Shelby Energy's CEO/President, Jeff Bragg, and Chief Financial Officer, Michael Moriarty, state in the Application that since its last rate increase in 2016, the Company has encountered increased costs in most areas of its business, and has attempted to offset those

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Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief, Order (Ky. PSC June 22, 2014) ("the Commission has long employed the principle of gradualism"); See also, Case No. 2000-00080, In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks, Order (Ky. PSC Sept. 27, 2000) ("the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.")

increased costs through various prudent changes.<sup>23</sup> However, in the 2022 test year, Shelby Energy provided \$15,787 in donations,<sup>24</sup> \$9,228 on prizes at its annual meeting, \$9,474 on employee appreciation, \$62,760 in membership dues, and \$88,606 for member newsletters.<sup>25</sup> The total miscellaneous expenses for the test year were \$192,049.<sup>26</sup>

Shelby Energy has excluded these expenses from its assessment of its suggested revenue requirement. Even still, if these expenses are being excluded from rates, it does not change the fact that the expenses are still being paid with ratepayer funds. The amount of miscellaneous expenses, approximately 10% of its requested rate increase, appears excessive to the Attorney General. The Company should aim to better utilize ratepayers' money by reducing the hundreds of thousands of dollars of expenditures that are not directly related to providing safe and reliable electric service.

**V. A 1.75 OTIER and a 2.21 TIER are not necessary for Shelby Energy to provide safe and reliable electric service.**

Shelby Energy has failed to meet its burden of proof to establish that a 1.75 OTIER, and a 2.21 TIER will lead to fair, just, and reasonable rates.<sup>27</sup> The Commission has recently 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.”<sup>28</sup> In this case, an OTIER of 1.75 and a TIER of 2.21 is excessive when compared to the financial and credit metrics required by the Company's lenders. Shelby Energy's loan covenants for RUS loans require it to meet an average coverage ratio for the two best years out of

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<sup>23</sup> Application at 2-3. *See also Id.* Exhibit 7 & 8, Mr. Bragg and Mr. Moriarty Testimony.

<sup>24</sup> In Shelby Energy's response to the Attorney General's First Request, Item 15 which, in part, sought further clarification on these expenses, Shelby Energy erroneously cites Exhibit 28 of its Application. It remains unclear who received these donations.

<sup>25</sup> Application at 164

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 3. *See also* Shelby Energy's response to the Attorney General's First Request, Item 4(b).

<sup>28</sup> 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.

the three most recent calendar years of a 1.25 TIER, 1.25 Debt Service Coverage (“DSC”) Ratio, and a 1.10 OTIER.<sup>29</sup> Moreover, the Attorney General would note that should the Commission award the Company a 2.21 TIER as requested, it would be a considerable outlier relative to the Commission’s precedent.<sup>30</sup>

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

**VI. The Commission should deny Shelby Energy’s request to increase the right-of-way expense that is included in the revenue requirement.**

Shelby Energy’s test year right-of-way expense is \$1,559,288.<sup>31</sup> In the pending case, the Company proposes to increase its right-of-way expense by making a pro forma adjustment of \$440,429 to the test year expense, for a total of \$1,999,717 in right-of-way expense.<sup>32</sup> However, when reviewing the right-of-way costs in the test year, as well as the four years prior to the test year, the Company never spent close to the proposed \$1,999,717.<sup>33</sup> For example, the average of the right-of-way expense from the past four years (2019, 2020, 2021, and the 2022 test year) equates to \$1,597,338.25 per year.<sup>34</sup> In fact, six out of the ten years in between 2012 – 2022, Shelby Energy did not actually spend the budgeted right-of-way maintenance expense.<sup>35</sup> It is important to note that if the Commission approves the seemingly arbitrary increase in the right-of-way expense then the Company will continue to receive the full \$1,999,717 million every year until rates are reset, regardless of whether or not the funds are used for right-of-way clearing. Thus, the Attorney

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<sup>29</sup> Shelby Energy’s response to the Staff’s First Request, Item 10.

<sup>30</sup> 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.

<sup>31</sup> Wolfram Testimony, Exhibit JW-2, Reference Schedule 1.13.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at Exhibit 24, Excel Spreadsheet.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

General recommends basing the right-of-way expense upon the Company's actual expenditures from the past four years (2019, 2020, 2021, and 2022), the average of which equates to \$1,597,338.25.

Shelby Energy alleges that right-of-way costs are rising, however, the Company acknowledges that it does not work with other regional electric utilities, to develop regional bids for right-of-way management, which could create significant cost savings.<sup>36</sup> The Attorney General requests for the Commission to require Shelby Energy to pursue opportunities with regional utilities or other private partners in an effort to reduce the right-of-way expense that the Company's customers pay for through electric rates.

### **CONCLUSION**

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

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<sup>36</sup> Shelby Energy's response to the Attorney General's First Request, Item 24(f).



Respectfully submitted,

DANIEL J. CAMERON  
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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 19, 2023, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 19<sup>th</sup> day of September, 2023.

A handwritten signature in blue ink, consisting of stylized initials and a horizontal line extending to the right.

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Assistant Attorney General