

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF SHELBY	)	
ENERGY COOPERATIVE, INC., FOR	)	
AUTHORIZATION TO EXECUTE MORTGAGE	)	
AND SECURITY AGREEMENT TO UNITED	)	CASE NO.
STATES OF AMERICA BY RURAL UTILITIES	)	2023-00007
SERVICE AND NATIONAL RURAL UTILITIES	)	
COOPERATIVE FINANCE CORPORATION TO	)	
SECURE DEBT FOR \$30,000,000.00 FROM THE	)	
UNITED STATES TREASURY	)	

ORDER

On February 2, 2023,<sup>1</sup> Shelby Energy Cooperative, Inc.'s (Shelby Energy) application seeking Commission approval to execute notes to the Rural Utilities Service (RUS) and the National Rural Utilities Cooperative Finance Corporation (CFC) with a maximum debt limit of \$30 million was deemed filed.

Shelby Energy seeks to borrow \$30 million from the United States Treasury pursuant to a loan contract with the United States of America, acting by and through the Administrator of RUS, at an adjustable interest rate for a term of 35 years with the first principal payment due December 1, 2024.<sup>2</sup> The funds will be used to finance construction of the projects contained in Shelby Energy's 2022-2025 Construction Work Plan (CWP).<sup>3</sup>

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<sup>1</sup> Shelby Energy tendered its application on January 17, 2023. By letter dated January 17, 2023, the Commission rejected the application for filing deficiencies. The deficiencies were subsequently cured, and the application is deemed filed on February 2, 2023.

<sup>2</sup> Application at 2, paragraph 7.

<sup>3</sup> Application at 3, paragraph 10.

Shelby Energy is requesting approval to execute a Restated Mortgage and Security Agreement (Restated Mortgage),<sup>4</sup> and a Uniform Commercial Code Financing Agreement (UCC Financing Statement)<sup>5</sup> between Shelby Energy, RUS, and CFC.

Shelby Energy must execute a Mortgage Note<sup>6</sup> to the United States Treasury and Loan Contract<sup>7</sup> with RUS, but explained that Shelby Energy is not requesting authorization to execute the promissory note and loan contract because RUS is an agency of the federal government with supervisory authority over evidences of indebtedness. Shelby Energy further explained that it is requesting approval of the Restated Mortgage and UCC Financing Statement because CFC is a party to those documents. CFC is neither controlled by nor is an agency of the federal government and, consequently, the exemption set forth in KRS 278.300(10) is not applicable to CFC.

#### LEGAL STANDARD

When an applicant seeks approval for the issuance of securities or evidences of indebtedness, KRS 278.300(3) requires “that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.” In addition, under KRS 278.300(4), “[t]he commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate.”

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<sup>4</sup> Application Exhibit 4.

<sup>5</sup> Application, Exhibit 6.

<sup>6</sup> Application, Exhibit 2.

<sup>7</sup> Application, Exhibit 3.

However, KRS 278.300(10) states, “This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect the utility over which the commission has jurisdiction.”

### DISCUSSION AND FINDINGS

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that the RUS promissory note and loan contract falls under the exemption of KRS 278.300(10) and are exempt from Commission approval for the following reasons. The RUS loan is through the United States Treasury pursuant to a loan contract with the United States of America, acting by and through the Administrator of RUS. The Commission finds that RUS is an agency of the federal government with supervisory authority over evidences of indebtedness. Therefore, the loan is subject to the supervision and control of the federal government, meeting the requirement of KRS 278.300(10).

The Commission further finds that Shelby Energy satisfied the legal standards established in KRS 278.300(3) to execute the Restated Mortgage and the UCC Financing Statement between Shelby Energy, RUS, and CFC. The Restated Mortgage and UCC Financing Statement are for lawful objects within the corporate purposes of Shelby Energy. The lawful objects of the utility’s purposes are to provide adequate, efficient and reasonable service at fair, just and reasonable rates. The Restated Mortgage and UCC Financing Statement are conditions of the RUS loan, which meets the lawful object of the

utility's purposes because the funds from the RUS loan will be used to finance construction of the projects to provide water service to customers. The Restated Mortgage and UCC Financing Statement is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair Shelby Energy's ability to perform that service. This is because the Restated Mortgage and UCC Financing Statement reflects existing debt Shelby Energy owes CFC that was previously approved by the Commission<sup>8</sup> and does not involve the issuance of new debt by Shelby Energy to CFC while preserving the priority of the lien under the Original Mortgage. The Restated Mortgage and UCC Financing Statement are reasonable and necessary and appropriate for Shelby Energy to meet its statutory duty to provide adequate, efficient and reasonable service because the Restated Mortgage and UCC Financing Statement are required for the RUS Loan and restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Shelby Energy's outstanding obligations under the Original Mortgage. The funds from the RUS Loan will be used to finance the construction projects contained in Shelby Energy's 2022-2025 CWP.<sup>9</sup> Therefore, the Commission concludes that the Restated Mortgage and UCC Financing Statement proposed by Shelby Energy should be approved.

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<sup>8</sup> Application, Exhibit 5.

<sup>9</sup> Application at 3, paragraph 10.

IT IS THEREFORE ORDERED that:

1. Shelby Energy is authorized to execute the Restated Mortgage and UCC Financing Agreement in favor of RUS and CFC in accordance with the terms and conditions described in Shelby Energy's application as amended.
2. Within ten days of the execution of the Restated Mortgage and UCC Financing Agreement, Shelby Energy shall file with the Commission an electronic version of each document.<sup>10</sup>
3. Any documents filed in the future pursuant to ordering paragraph 2 shall reference this case number and be retained in the utility's general correspondence file.
4. Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.
5. This case is closed and removed from the Commission's docket.

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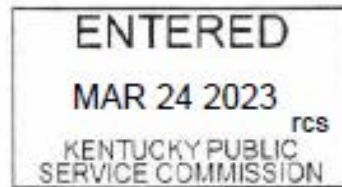
<sup>10</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
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Commissioner



ATTEST:

  
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Executive Director

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