

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CUMBERLAND	)	CASE NO.
VALLEY ELECTRIC, INC. FOR A RATE	)	2024-00388
ADJUSTMENT PURSUANT TO 807 KAR 5:078	)	

ORDER

On March 24, 2025, Cumberland Valley Electric, Inc (Cumberland Valley Electric) tendered an application for an alternative rate adjustment for electric cooperatives pursuant to 807 KAR 5:078. Pursuant to 807 KAR 5:078 Section 8(2), the Commission shall complete its initial review of the application within ten business days of the filing of the application and issue an Order either accepting or rejecting the application for filing.

LEGAL STANDARD

Administration regulation 807 KAR 5:078 establishes an alternative procedure for rural electric cooperatives to apply for rate adjustments.<sup>1</sup> The regulation allows cooperatives to request modest rate increases under specific conditions and outlines the necessary documentation and procedures for filing such applications, aiming to simplify and reduce the costs associated with rate adjustments for electric cooperatives.

Administrative regulation 807 KAR 5:078, Section 3(2) requires that, if five or more years have elapsed since the cooperative's most recent general rate adjustment, a detailed explanation must be provided for why the cooperative did not seek a *general rate adjustment* in that period.

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<sup>1</sup> 807 KAR 5:078.

Pursuant to 807 KAR 5:078 Section 1(3), a “general rate adjustment” is defined as an adjustment in rates received pursuant to an application filed pursuant to 807 KAR 5:001, Section 16. Pursuant to 807 KAR 5:078 Section 1(4) a “base rate adjustment” mean a general rate adjustment or an adjustment in rates received pursuant to an application filed pursuant to Section 2 of this administrative regulation.”

Additionally, administrative regulation 807 KAR 5:078 addresses expenses that should be excluded from ratemaking. Section 6 provides:

Exclusions for Ratemaking Purposes. The following shall be excluded for ratemaking purposes and from the pro forma test year income statement and supporting documentation included in an application made pursuant to Section 2 of this administrative regulation:

- (1) the contribution made for the least generous plans for employer retirement contributions for employees participating in multiple benefit packages.

### DISCUSSION AND FINDINGS

Upon review of Cumberland Valley Electric’s application tendered pursuant to 807 KAR 5:078, the Commission finds the application fails to meet the requirements of 807 KAR 5:078 Section 3(2) and 807 KAR 5:078 Section 6(1). Commission regulation 807 KAR 5:078 Section 8(3)(a), permits rejection of an application if the application does not comply with the relevant statutes or regulations. As further explained below, the application fails to comply with 807 KAR 5:078 Section 3(2) and 807 KAR 5:078 Section 6(1), thus should be rejected.

The first deficiency noted in the application is that Cumberland Valley Electric failed to comply with 807 KAR 5:078 Section 3(2). Cumberland Valley Electric stated in its

application that the last general adjustment of rates occurred in Case No. 2020-00264.<sup>2</sup> In that case, the rates became effective on March 23, 2021, per Order dated December 30, 2020.<sup>3</sup> However, Cumberland Valley Electric incorrectly identified Case No. 2020-00264 as a general rate adjustment. Pass-thru rate adjustments and streamline rate adjustments pursuant to the pilot program established in Case No. 2018-00407<sup>4</sup> are not recognized as general rate adjustments by the Commission pursuant to the regulatory definition. Therefore, any case filed pursuant to 807 KAR 5:078 should be categorized as a streamline rate adjustment and not a general rate adjustment.

This distinction is most notably evidenced by the numerous examples of financial information required to be filed in support of general rate adjustments from which a streamlined case is exempt, including filings from fifteen categories of financial records.<sup>5</sup> The explicit differences between the procedures and required evidence necessary to support a general rate adjustment, in contrast to a streamlined case, evidences the fundamentally different purpose and limited scope of review associated with a streamlined case, supporting their exclusion from qualifying as a general rate adjustment. Furthermore, the definition of base rate adjustment provides that both general rate adjustments and streamline procedures pursuant to 807 KAR 5:078 Section 2 are considered base rate adjustments. This definition demonstrates the distinction between

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<sup>2</sup> Case No. 2020-00264, *Electronic Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates Pursuant to Streamlined Pilot Program Established in Case No. 2018-00407* (Ky. PSC Dec. 30, 2020).

<sup>3</sup> Case No. 2020-00264, Dec. 30 2020 Order at 15.

<sup>4</sup> Case No. 2018-00407, *A Review of The Rate Case Procedure for Electric Distribution Cooperatives* (Ky. PSC Dec. 20, 2019).

<sup>5</sup> Case No. 2018-00407, Dec. 11, 2018 Order at 13.

general rate adjustments and streamline procedures. Therefore, Case No. 2020-00264<sup>6</sup> is incorrectly identified as Cumberland Valley Electric's last general rate adjustment, given that it was filed as an application pursuant to the streamlined procedure pilot program.

Cumberland Valley Electric's actual last general rate adjustment filed pursuant to 807 KAR 5:001, Section 16 was in 2016, Case No. 2016-00169.<sup>7</sup> Since five or more years have elapsed since that general rate adjustment, pursuant to 807 KAR 5:078, Section 3(2), the Commission finds that Cumberland Valley Electric should provide a detailed explanation for why it did not seek a *general rate adjustment* since that time.

The next deficiency noted in the application relates to Cumberland Valley Electric's failure to provide evidence of its compliance with 807 KAR 5:078 Section 6(1).<sup>8</sup> Cumberland Valley Electric failed to provide any statement or supporting documentation in its application that it complied with Section 6(1) or that it does not have employees participating in multiple benefit packages. the therefore, the Commission finds that Cumberland Valley Electric should document and provide evidence of its compliance with 807 KAR 5:078 Section 6(1).

Each of these deficiencies must be cured for Cumberland Valley Electric's application to meet the filing requirements of 807 KAR 5:078 and related regulations. However, if Cumberland Valley Electric elects to amend its application pursuant to 807 KAR 5:078 Section 8(5)(b) and proceed as a general rate adjustment pursuant to 807

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<sup>6</sup> Case No. 2020-00264, *Electronic Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates Pursuant to Streamlined Pilot Program Established in Case No. 2018-00407.*

<sup>7</sup> Case No. 2016-00169, *Application of Cumberland Valley Electric for a General Adjustment of Rates.*

<sup>8</sup> 807 KAR 5:078 Section 6(1) – “The contribution made for the least generous plans for employer retirement contributions for employees participating in multiple benefit packages;”.

KAR 5:001 Section 16, in addition to satisfying all additional filing requirements, it should include the following additional items:

<b>FILING REQUIREMENTS TO AMEND APPLICATION FROM A STREAMLINE CO-OP CASE TO A GENERAL RATE CASE</b>
a. Proposed pro forma adjustments to test-year revenues and expenses with supporting documentation
b. Audited financial statements, including balance sheet, income statement, and cash flow statement
c. Detailed schedules of all proposed tariff changes
d. A comprehensive rate design proposal with justifications
e. A recent depreciation study for plant assets, if applicable
f. Forecasted test period information, if using a forecasted test period, including assumptions and reconciliations
g. Justification and supporting calculations for the proposed revenue requirement
h. Compliance with public notice requirements for general rate cases under 807 KAR 5:001 Section 17

Cumberland Valley Electric should notify the Commission within 60 days of service of this Order, and provide all required documents listed above, whether it wishes to amend its application and proceed as a general rate adjustment application pursuant to 807 KAR 5:001 Section 16. Conversely, within 60 days of the service date of this Order, if Cumberland Valley Electric wishes to proceed with its application under 807 KAR 5:078, it will need to cure all of the deficiencies listed herein. Given that annual reports are due to be filed with the Commission on March 31<sup>st</sup> of each calendar year,<sup>9</sup> the Commission cautions Cumberland Valley Electric regarding delays in addressing the matter. If the application is not accepted for filing prior to March 31, 2025, the application will need to be refiled using a new historical test year or provide evidence that Cumberland Valley Electric has been granted an extension.

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<sup>9</sup> See, 807 KAR 5:006, Section 4(2).

The Commission also notes that Cumberland Valley Electric provided an adjustment in its application for lost loads and revenues resulting from the loss of two of its large power bitcoin customers, but the replacement to this load is imminent.<sup>10</sup> Cumberland Valley Electric acknowledged that it may obtain new customers during the pendency of this application, and it would update the information filed herein to reflect any reduction in the revenue deficiency.<sup>11</sup>

On March 7, 2025, East Kentucky Power Cooperative (EKPC) filed two Industrial Power Agreements with Interruptible Service between it, Cumberland Valley Electric, and Letcher Power, LLC (Letcher Power).<sup>12</sup> EKPC requested expedited treatment of the contracts via a Motion for Deviation pursuant to KRS 278.180(1) and that the contracts be allowed to go into effect on April 1, 2025.<sup>13</sup> Cumberland Valley Electric's previous bitcoin customers operated at the two locations that will be occupied by Letcher Power

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<sup>10</sup> Application, Direct Testimony of Robert Tolliver (Tolliver Testimony) at 5, lines 10-11; Direct Testimony of John Wolfram (Wolfram Testimony), page 26, lines 14-26 and page 14, lines 19-20.

<sup>11</sup> Application, Wolfram Testimony, page 26, lines 14-26.

<sup>12</sup> Industrial Power Agreement with Interruptible Service between EKPC, Cumberland Valley Electric, and Letcher Power (Chad Substation), effective April 1, 2025. (Chad Station Industrial Power Agreement with Interruptible Service), ([https://psc.ky.gov/tariffs/Electric/Cumberland%20Valley%20Electric/Contracts%20and%20Info/East%20Kentucky%20Power%20Cooperative%20Inc/Letcher%20Power,%20LLC/2025-04-01\\_Chad%20Substation%20Industrial%20Power%20Agreement%20with%20Interruptible%20Service.pdf](https://psc.ky.gov/tariffs/Electric/Cumberland%20Valley%20Electric/Contracts%20and%20Info/East%20Kentucky%20Power%20Cooperative%20Inc/Letcher%20Power,%20LLC/2025-04-01_Chad%20Substation%20Industrial%20Power%20Agreement%20with%20Interruptible%20Service.pdf)); Industrial Power Agreement with Interruptible Service between EKPC, Cumberland Valley Electric, and Letcher Power (Oven Fork Substation), effective April 1, 2025. (Oven Fork Substation Industrial Power Agreement with Interruptible Service), [https://psc.ky.gov/tariffs/Electric/Cumberland%20Valley%20Electric/Contracts%20and%20Info/East%20Kentucky%20Power%20Cooperative%20Inc/Letcher%20Power,%20LLC/2025-04-01\\_Oven%20Fork%20Substation%20Industrial%20Power%20Agreement%20with%20Interruptible%20Service.pdf](https://psc.ky.gov/tariffs/Electric/Cumberland%20Valley%20Electric/Contracts%20and%20Info/East%20Kentucky%20Power%20Cooperative%20Inc/Letcher%20Power,%20LLC/2025-04-01_Oven%20Fork%20Substation%20Industrial%20Power%20Agreement%20with%20Interruptible%20Service.pdf)

<sup>13</sup> Chad Substation Industrial Power Agreement with Interruptible Service; Oven Fork Substation Industrial Power Agreement with Interruptible Service.

for a new cryptocurrency mining operation.<sup>14</sup> As of April 1, 2025, the referenced contracts were approved, and it appears that the new customers will replace the lost loads and revenues from the prior loss of the two bitcoin customers.<sup>15</sup> Due to this load replacement, the Commission finds that Cumberland Valley Electric should re-evaluate this adjustment upon any re-filing of the application.

Moreover, the Commission has concerns regarding Cumberland Valley Electric's compliance with 807 KAR 5:078 Section 8(3)(b) but does not reject the application on this basis due to the projected load replacement. In its application, Cumberland Valley Electric is seeking a target increase of \$2,250,000 or 3.99 percent.<sup>16</sup> However, based on a preliminary review of the test year, a revenue of \$2,790,581 or a 4.95 percent increase appears necessary.<sup>17</sup> This is a difference of \$540,581.<sup>18</sup> The Commission finds that Cumberland Valley Electric, if it refiles its application, should provide a detailed explanation of how it intends to manage its financial resources and maintain its statutorily required duty to provide adequate service despite the projected shortfall to be compliant with 807 KAR 5:078 Section 8(3)(b).

Finally, the Commission notes that the Attorney General is allowed seven days to file comments regarding the cooperative's application and whether it should be accepted

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<sup>14</sup> Case No. 2025-00063, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. for Approval of a Shortened Notice Period Pursuant to KRS 278.180(1)*, Motion for Deviation (filed Mar. 7, 2025).

<sup>15</sup> Chad Substation Industrial Power Agreement with Interruptible Service; Oven Fork Substation Industrial Power Agreement with Interruptible Service.

<sup>16</sup> Application, Wolfram Direct Testimony, page 7, line 3.

<sup>17</sup> Application, Wolfram Direct Testimony, page 8, line 16.

<sup>18</sup> Application, Wolfram Direct Testimony, page 9, line 5.

for filing pursuant to this administrative regulation or treated as an application file pursuant to 807 KAR 5:001, Section 16.<sup>19</sup> Given the deficiencies detailed above, the Commission finds that the Attorney General should be allowed to file comments within seven days, if and when, Cumberland Valley Electric chooses to refile its application curing deficiencies pursuant to 807 KAR 5:078.

IT IS THEREFORE ORDERED that:

1. Cumberland Valley Electric's application is rejected for filing pursuant to 807 KAR 5:078 Section 8(3)(a).

2. Cumberland Valley Electric shall take one of the following actions within 60 days of service of this Order:

a. Amend its application: Transition to a general rate adjustment application under 807 KAR 5:001 Section 16, including all required supplemental documentation and compliance with all applicable regulations;

b. Cure deficiencies: Address all deficiencies listed above and provide justification for revenue sufficiency as required under 807 KAR 5:078 Sections 8(3)(a) and in furtherance of KRS 278.030; or

c. Withdraw Application: Notify the Commission, in writing, if it elects not to proceed.

3. The statutory or administrative processing deadlines for Cumberland Valley Electric's application pursuant to 897 KAR 5:078 shall not begin until such time an application has been accepted for filing.

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<sup>19</sup> See KAR 5:078 Section 8(1)(b).




4. The Attorney General shall be allowed to file comments within seven days, if and when, Cumberland Valley Electric chooses to refile its application curing deficiencies pursuant to 807 KAR 5:078.

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PUBLIC SERVICE COMMISSION

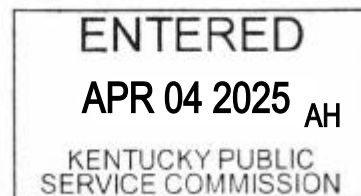
  
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