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July 30, 2013

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: *Jeff M. Short v. Kentucky Utilities Company*
Case No. 2013-00287

Dear Mr. DeRouen:

Enclosed please find, for filing, the original and ten (10) copies of Kentucky Utilities Company's Answer in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our officer courier.

Sincerely,

W. Duncan Crosby III

WDC/ec
Enclosures as mentioned
cc: Jeff M. Short

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JEFF M. SHORT,	)	
COMPLAINANT	)	**CASE NO. 2013-00287**
v.	)	
KENTUCKY UTILITIES COMPANY,	)	
DEFENDANT	)	

ANSWER OF KENTUCKY UTILITIES COMPANY

On July 15, 2013, the Kentucky Public Service Commission ("Commission") issued an Order to Satisfy or Answer directing Kentucky Utilities Company ("KU") to file a written response to the allegations contained in Complainant's letter to the Commission dated May 15, 2013. For its Response to the Commission's Order, KU respectfully submits this Answer to the Complaint of Jeff M. Short. In support of its Answer, and in response to the specific averments contained in said Complaint, KU states as follows:

1. KU admits that Mr. Short is a KU customer who currently takes service under Rate LEV (Low-Emission Vehicle Service).

2. KU admits the factual allegations contained in the first two sentences of the first paragraph of page 2 of the Complaint, namely that KU personnel have communicated with Mr. Short and told him that if he acquires photovoltaic generating units ("PV") and if he participates in Rider NMS (Net Metering Service) while taking service under Rate LEV, any energy he produces in a time-of-use period that exceeds his energy consumption in the same time-of-use period can be used to offset consumption only in that same time-of-use period in future billing

periods; it cannot be given a monetary value and used to offset his cost of energy for other time-of-use periods.

3. KU has been unable to find the quote Mr. Short attributes to the Interstate Renewable Energy Council ("IREC"), which he reports having found on the website for the Database of State Incentives for Renewables and Efficiency ("DSIRE").[1] KU admits the quote Mr. Short attributes to DSIRE does appear on DSIRE's website.[2] These quotes, however, are irrelevant because neither DSIRE nor IREC serve as legal authority in Kentucky.

4. KU lacks sufficient information to admit or deny the remainder of the Complaint's factual allegations.

5. Mr. Short alleges that KU's tariff does not comply with his reading of KRS 278.466.[3] The Commission, however, has held explicitly that KU's Rider NMS complies with all of Kentucky's Net Metering Statutes, including KRS 278.466:

> Having reviewed the proposed net metering tariffs and application forms, the Intervenors' comments and reply comments, LG&E/KU's response comments and "sur-reply" comments, and the amended LG&E/KU net metering tariffs, the Commission finds that <u>the net metering tariffs and application forms filed by all of the jurisdictional utilities, except for Fleming-Mason Energy Cooperative and Taylor County RECC, are in compliance with the provisions of KRS 278.465-468 and the Net Metering Guidelines</u>.[4]

The case in which the Commission issued its Order approving KU's Rider NMS as complying with Kentucky's Net Metering Statutes was extensive, thorough, and competently litigated by all jurisdictional electric utilities, the Kentucky Attorney General, the Kentucky Resources Council, Appalachia - Science in the Public Interest, Solar Energy Solutions, Inc., and

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[1] Complaint at 1 ("Any customer's net excess generation at the end of the billing period should be credited to the customer's next bill as a kWh credit (i.e., at the utility's full retail rate) indefinitely, until the customer leaves the utility system.").

[2] Available at http://www.dsireusa.org/solar/incentives/incentive.cfm?Incentive_Code=KY07R&re=1&ee=1

[3] Complaint at 2.

[4] *In the Matter of: Development of Guidelines for Interconnection and Net Metering for Certain Generators with Capacity Up to Thirty Kilowatts*, Admin. Case No. 2008-00169, Order at 3 (August 17, 2009) (emphasis added).

Joshua Bills. The Commission and the case participants dedicated over a year to litigating these issues. Neither Kentucky's Net Metering Statutes nor KU's Rider NMS have changed since the Commission's Order quoted above.[5] Therefore, Mr. Short is collaterally estopped from challenging in this proceeding the Commission's determination in Administrative Case No. 2008-00169 that KU's Rider NMS tariff complies with Kentucky's Net Metering Statutes.[6]

6. Mr. Short's complaint does not state a claim upon which relief can be granted because it is hypothetical; he has suffered no harm, even on his account of the facts. The crux of Mr. Short's complaint is that if he installs PV at his home and takes service under KU's Rider NMS, then subsequently if his PV produces more energy in Rate LEV's peak pricing period in a given billing period than he consumes, KU's tariff will not permit him to use the peak-period kWh credits to offset his energy usage in other pricing periods; rather, KU would permit him to use the peak-period credits to offset future billing periods' peak-period energy usage.[7] Mr. Short's complaint does not state a claim upon which relief can be granted because none of the events that he believes would constitute harm have occurred.

7. Mr. Short's claims are incorrect as a matter of law. First, KU's Rider NMS tariff, which the Commission has approved as consistent with Kentucky's Net Metering Statutes and has the force of law until a future Commission order, explicitly defines credits for net excess generation as energy credits, not monetary credits: "'Billing Period Credit' shall be the electricity

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[5] None of Kentucky's Net Metering Statutes have been amended since July 15, 2008. KU has applied for changes to its base rates and certain of its tariff sheets twice since the Commission's August 17, 2009 Order in Admin. Case 2008-00169, but in neither of those cases did KU request or the Commission order changes to KU's Rider NMS. *See* Case Nos. 2009-00548 and 2012-00221.

[6] *See, e.g.*, Yeoman v. Commonwealth, 983 S.W.2d 459, 465 (Ky. 1998) ("For issue preclusion to operate as a bar to further litigation, certain elements must be found to be present. First, the issue in the second case must be the same as the issue in the first case. Restatement (Second) of Judgments § 27 (1982). Second, the issue must have been actually litigated. *Id.* Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action. *Id.* Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court's judgment. *Id.*"). All of these elements are satisfied here.

[7] Complaint at 2.

generated by the customer that flows into the electric system and which exceeds the electricity supplied to the customer from the electric system during any billing period."[8] This Commission-approved interpretation is consistent with KRS 278.466(5)(c), which speaks of electricity credits, not monetary credits: "If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the excess kilowatt hours in accordance with subsections (3) and (4) of this section. This electricity credit shall appear on the customer-generator's next bill." Also, this interpretation is consistent with KRS 278.466(5)(d), which prohibits utilities from paying net-metering customers for unused energy credits when they close their accounts.[9] In other words, there is no indication in Kentucky's Net Metering Statutes of any intent to monetize net excess generation, and at least one clear prohibition against it. KU's Rider NMS reflects that intent, which the Commission has approved.

KU's applying a net-metering customer's time-of-use energy credits to the same time-of-use period in subsequent billing periods is also completely consistent with Kentucky's Net Metering Statutes. KRS 278.466(3) states, "If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place." That is precisely what KU does; KU records a customer-generator's net excess generation in the time-of-use period it is produced and gives the customer-generator energy credits in that same time-of-use period in future billing periods. KU does not diminish or increase the value of the credits by moving them across time-of-use periods, but rather preserves their value by crediting them against future use

[8] Kentucky Utilities Company, P.S.C. No. 16, Original Sheet No. 57.5.
[9] "If a customer-generator closes his account, no cash refund for residual generation-related credits shall be paid"

in the same time-of-use period. KRS 278.466(3) neither requires nor permits KU to do otherwise.

8. Mr. Short's desire to be paid for generating electricity as a net-metering customer is inconsistent with the structure of KU's electric tariff, which already provides a means for small power producers to be paid for their production. As required by federal law, KU has a Small Capacity Cogeneration Qualifying Facilities tariff rider, Rider SQF. The rider provides time-differentiated and non-time-differentiated compensation rates from which the producer may choose. The rider provides that if a producer is a KU customer, KU may credit the monetary value of the production against the customer's bill. If Mr. Short desires to monetize the value of the power he will produce if he installs solar generation, Rider SQF is the appropriate means to do so, not Rider NMS.

9. Mr. Short is incorrect when he states there is a tension between Rate LEV and Rider NMS, and that the functioning of these two tariff provisions harms him. Kentucky law requires KU to have Rider NMS, which rider this Commission has approved in its current form. The purpose of the rider is to permit customers who self-generate with certain technologies to do so to offset some or all of their own consumption. That purpose is wholly unrelated to Rate LEV, an entirely voluntary experimental rate, the stated purpose of which is "to encourage off-peak power for low-emission vehicles."[10] There is nothing inconsistent about these purposes, and it is entirely possible for a customer to take service under Rate LEV and Rider NMS. Mr. Short's real complaint—which is still hypothetical at this point—is that, having already received financial benefits for taking service under Rate LEV, he will not receive as much extra financial benefit as he would like if he installs PV and participates in Rider NMS, though he certainly will

[10] Kentucky Utilities Company, P.S.C. No. 16, Original Sheet No. 79.

receive the value of his generation in each time-of-use period.[11] But as shown above, Kentucky's Net Metering Statutes and KU's Commission-approved Rider NMS do not permit the financial arrangement Mr. Short desires, and the Commission must deny Mr. Short's complaint.

10. KU denies all allegations contained in the Complaint that are not expressly addressed in the foregoing paragraphs of this Answer.

First Affirmative Defense

The Complaint impermissibly collaterally attacks issues fully litigated and conclusively adjudicated in Administrative Case No. 2008-00169, particularly the compliance of KU's Rider NMS with Kentucky's Net Metering Statutes. Mr. Short's claims are therefore barred under the doctrine of collateral estoppel, and the Commission should dismiss the Complaint with prejudice.

Second Affirmative Defense

Because Mr. Short has not suffered any harm on his own account of the facts at issue in this proceeding, the Complaint fails to set forth any claim upon which relief can be granted by this Commission and therefore should be dismissed without prejudice.

WHEREFORE, Kentucky Utilities Company respectfully asks the Commission to issue an Order:

1. Dismissing the Complaint with prejudice as an impermissible collateral attack on this Commission's August 17, 2009 Order in Administrative Case No. 2008-00169;

[11] Furthermore, Mr. Short may return to taking service under Rate RS (Residential Service) and then participate in Rider NMS if he believes his financial results will be better under such an arrangement.

2. In the alternative, dismissing the Complaint without prejudice for failing to state a claim upon which relief can be granted because the claimed harm is hypothetical;
3. In the alternative, denying Mr. Short's prayer for relief as inconsistent with Kentucky's Net Metering Statutes, KU's Rider NMS, and the Commission's August 17, 2009 Order in Administrative Case No. 2008-00169;
4. Providing an opportunity to conduct discovery, file written testimony and other forms of evidence, and conduct a full evidentiary hearing if the Commission does not dismiss or deny the Complaint in its entirety; and
5. Granting KU any and all other relief to which it may be entitled.

Dated: July 30, 2013

Respectfully submitted,

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- and –

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Counsel for Defendant,
Kentucky Utilities Company

Certificate of Service

I hereby certify that a copy of the above and foregoing Answer of Kentucky Utilities Company was served upon the following person by first class, United States mail, postage prepaid, on the 30th day of July 2013:

Jeff M. Short
9180 KY Highway 78
Stanford, KY 40484

Counsel for Defendant,
Kentucky Utilities Company