

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|----------------------------|---|------------|
| DAVID I. DAWLEY |) | |
| |) | |
| COMPLAINANT |) | CASE NO. |
| |) | 2018-00259 |
| V. |) | |
| |) | |
| DUKE ENERGY KENTUCKY, INC. |) | |
| |) | |
| DEFENDANT |) | |

ORDER

This matter arises upon a complaint tendered by David I. Dawley (Mr. Dawley) on July 27, 2018, alleging that Duke Energy Kentucky, Inc. (Duke Kentucky) was billing him for an analog meter that Duke Kentucky had not yet installed. Mr. Dawley requests that Duke Kentucky credit his account for the alleged overbilling. Mr. Dawley further requests that his existing meter be removed and an analog meter installed. Last, Mr. Dawley requests that a civil penalty be assessed against Duke Kentucky for an alleged violation of federal law by installing advanced metering infrastructure (AMI) with opt-out provisions instead of opt-in provisions.

Commission regulation 807 KAR 5:001, Section 20(1)(c), requires that a formal complaint must state “fully, clearly, and with reasonable certainty” the act that is the subject of the complaint, the law that was allegedly violated, and the facts of the alleged act. 807 KAR 5:001, Section 20(4)(a), requires that the Commission determine whether a complaint states a *prima facie* case. In other words, a complaint must present sufficient

evidence that, if uncontroverted by other evidence, would entitle the complainant to the relief requested. The party filing a complaint has the burden of proving his claim.

Under 807 KAR 5:001, Section 20(4)(1)(a), if it is determined that the complaint fails to state a *prima facie* case, the complainant must be provided the opportunity to amend the complaint within a specified time. If the complaint is not timely amended to set forth a *prima facie* case, the complaint is dismissed.

Here, Mr. Dawley has not provided any evidence to support his claims. Mr. Dawley sets forth assertions that he was charged \$25 for three months for an analog meter that had not been installed, but provides no information regarding the date that he made his request to opt out of AMI meters, or documentation regarding the date(s) and amount(s) of the alleged overbilling. Mr. Dawley alleges that, on an unspecified date, a Duke Kentucky employee declined to remove the existing meter and install an analog meter due to safety concerns. Mr. Dawley fails to provide the dates and documentation to support his claim that repairs were made to address the safety issue. Finally, Mr. Dawley failed to provide the date or documentation that he took affirmative steps to notify Duke Kentucky to inform it that the necessary repairs were made. Mr. Dawley's assertion that Duke Kentucky had to turn his electric service off and on in order for the repairs to be made does not establish that Duke Kentucky was aware of the status of the repairs or that the safety concerns had been resolved.

Having reviewed the complaint and being otherwise sufficiently advised, the Commission finds that Mr. Dawley's complaint does not conform to the requirements of 807 KAR 5:001, Section 20(1), and does not establish a *prima facie* case. The

Commission, in accordance with 807 KAR 5:001, Section 20(4)(a)(1), will provide Mr. Dawley an opportunity to amend his complaint to address the deficiencies.

The Commission finds that Mr. Dawley request for a civil penalty assessed against Duke Kentucky, but paid to Duke Kentucky's customers, for an alleged violation of a federal law should be denied for the following reasons. First, the federal law cited by Mr. Dawley, P.L. 109-58, Section 1252, codified as 16 U.S.C. 2621(d)(14), does not mandate opt-in provisions for AMI meters. That law directs utilities to develop time-based rates, otherwise called time of day rates, to enable customers to manage electric energy use through advanced metering technology. That law also requires state regulatory agencies, such as this Commission, to investigate and decide whether to require utilities to implement time-based rates. Thus, there is no merit to Mr. Dawley's argument that federal law requires utilities to offer AMI meters to customers on an opt-in basis or that the federal law cited by Mr. Dawley pre-empts state law.

Second, the Commission has statutory authority to enforce the provisions of KRS Chapter 278; the Commission does not have statutory authority to enforce the federal law cited by Mr. Dawley. Further, the Commission's authority to assess civil penalties is limited by KRS 278.990, which does not authorize the Commission to assess a civil penalty to enforce an alleged violation of 16 U.S.C. 2621(d)(14).

The Commission will not address Mr. Dawley's allegations regarding health claims, other than to note that the allegations refer to generalized information unrelated to Mr. Dawley's claims that he has been overbilled, and therefore are not relevant to this matter.

IT IS THEREFORE ORDERED that:

1. Mr. Dawley's complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.
2. Mr. Dawley's request for the assessment of civil penalties against Duke Kentucky for an alleged violation of 16 U.S.C. 2621(d)(14) is denied.
3. Mr. Dawley shall have 20 days from the date of entry of this Order to file an amended complaint with the Commission that conforms to the requirements of 807 KAR 5:001, Section 20(1), and that states a *prima facie* case.
4. If an amended complaint is not filed within 20 days from the date of entry of this Order, the case shall be closed and removed from the Commission's docket without further order.

By the Commission

ENTERED
AUG 03 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00259

David Dawley
1831 Whispering Trails
Union, KENTUCKY 41091

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

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139 East Fourth Street
Cincinnati, OH 45202