

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

On December 12, 2018, David I. Dawley (Mr. Dawley) filed a letter requesting rehearing of the Commission's October 3, 2018 Order dismissing Mr. Dawley's complaint against Duke Energy Kentucky, Inc. (Duke Kentucky). The Commission will treat Mr. Dawley's letter as a motion for rehearing. In the Complaint that established this case, Mr. Dawley alleged that Duke Kentucky violated its advanced metering infrastructure (AMI) tariff by failing to install an analog meter and by billing Mr. Dawley AMI opt-out fees. In the October 3, 2018 Order, the Commission found that Duke Kentucky did not violate any statute, regulation, or tariff provision that the Commission is charged with enforcing because Duke Kentucky provided Mr. Dawley with a non-communicating meter as required by the AMI tariff. In finding that Duke Kentucky did not violate the AMI tariff or improperly charge Mr. Dawley the opt-out fee, the Commission noted that Mr. Dawley's claim was predicated on his erroneous belief that he was entitled to receive an analog meter.

In the motion for rehearing, Mr. Dawley raises the same issues he raised in his Complaint regarding his demand that Duke Kentucky install an analog meter, the alleged safety issues with AMI meters, and alleged constitutional violations arising from AMI meters. Mr. Dawley also raises two new arguments: (1) that he should be able to telephone his meter reading to Duke Kentucky, and thus not have to pay the opt-out fee, which is required under the AMI tariff; and (2) the Duke Kentucky violated truth in advertising laws.

KRS 278.400 provides that a party to a Commission proceeding may apply for rehearing of a Commission determination within 20 days after service of the order. Further, the standard of review for rehearing is whether the party requesting rehearing could, with reasonable diligence, have offered the evidence upon which rehearing is requested prior to the Commission's determination.

Based on the motion and being otherwise sufficiently advised, the Commission finds that Mr. Dawley's request for rehearing should be denied as untimely. When a statute establishes a right of rehearing, there must be strict compliance with the requirements set forth in the statute.¹ Here, Mr. Dawley filed his request for rehearing 70 days after the October 3, 2018 Order, which is substantially outside the 20 day period for requesting rehearing. Therefore, Mr. Dawley failed to satisfy the requirements of KRS 278.400.

Setting aside the fact that the request was untimely, the Commission further finds that Mr. Dawley's request for rehearing offered no additional evidence that could not, with reasonable diligence, have been offered during the pendency of the case, and therefore

¹ *Bd. of Adjustment of City of Richmond v. Flood*, 581, S.W.2d 1, 2 (Ky. 1978).

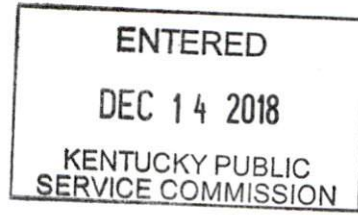
the request should be denied for failure to satisfy the requirements of KRS 278.400. Additionally, the new arguments raised by Mr. Dawley do not establish a basis for rehearing. First, Mr. Dawley seeks to contravene KRS 278.160, which requires a utility to strictly comply with its tariff, by requesting an exemption from the opt-out terms in the tariff, which the Commission previously found were reasonable. Second, the Commission has no authority to enforce alleged violations of truth in advertising laws.

IT IS THEREFORE ORDERED that:

1. Mr. Dawley's request for rehearing is denied.
2. This case is closed and removed from the Commission's docket.

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By the Commission



ATTEST:


Executive Director

David Dawley
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