

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELIZABETH L. EICHELBERGER)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2022-00289
)	
DUKE ENERGY KENTUCKY, INC.)	
)	
DEFENDANT)	

ORDER

On May 9, 2024, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to KRS 278.400, requesting rehearing and/or clarification of the final Order entered April 19, 2024, which granted the complaint of Elizabeth L. Eichelberger. The Commission found that Duke Kentucky had incorrectly calculated Ms. Eichelberger’s gas and electric bills under its Annual Budget Billing tariffs and required Duke Kentucky to recalculate her budget billing monthly bill amounts.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

PETITION

Duke Kentucky's petition seeks review of three issues. First, Duke Kentucky requested the Commission declare that Duke Kentucky's current method of calculating budget billing, in use since April 2022, complies with the Annual Budget Billing tariffs. Duke Kentucky argued that it "has, for all customers commencing a new year of Budget Billing Annual plan, been calculating budget billing payment amounts using the rates in effect at the time of the calculation for all of the historical usage"³ as required by the final Order.⁴

Second, Duke Kentucky sought 60 days to recalculate Ms. Eichelberger's gas and electric budget bills instead of the 30-day deadline set forth in the final Order. Duke Kentucky stated that "completing the required settle-up and setting a new Annual Budget Billing amount will require an additional billing period to complete."⁵

² *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ Duke Kentucky's Application for Rehearing (Petition) filed May 9, 2024) at 4.

⁴ Order (Ky. PSC Apr. 19, 2024) at 9—10.

⁵ Petition at 4—5.

Lastly, Duke Kentucky sought to replace the incorrect bill language that the Commission required it to remove from Ms. Eichelberger's with a better explanation of how budget billing works.⁶

DISCUSSION AND FINDINGS

Duke Kentucky did not address the legal standard for rehearing found in KRS 278.400. Duke Kentucky did not allege application of new evidence, material error or omission, or that the final Order was unreasonable or unlawful. Therefore, the Commission finds that rehearing should be denied.

Even if Duke Kentucky were currently in compliance regarding Ms. Eichelberger's account, it violated its gas and electric Annual Budget Billing tariffs prior to April 2022; therefore, subsequent calculations are not material to the outcome of the case. Furthermore, the billing calculations provided by Duke Kentucky during discovery do not clearly establish that its calculations complied with tariffs since April 2022. Calculations for 2022 provided by Duke Kentucky indicate application of a "pricing factor"⁷ that is not explained by Duke Kentucky. Although the request for rehearing/clarification is denied, the Commission will initiate an investigation into the tariff application issues identified in this case as applied to other customers. Once initiated Duke Kentucky will have the opportunity to provide additional information to attempt to establish compliance for budget billing customers whose new settle-up months occurred after April 2022.

Although the rehearing request is denied, the Commission, on its own motion, finds that a deviation from its final Order should be granted. Duke Kentucky should have

⁶ Petition at 5—6.

⁷ Duke Kentucky's Supplemental Response to Commission Staff's Third Request for Information (filed Aug. 3, 2023), Item 3, Supplemental Attachment.


additional time to comply with the final Order, so that Ms. Eichelberger receives sufficient notice of the changes, and Duke Kentucky has sufficient time to calculate Ms. Eichelberger's bill for the settle-up month and the subsequent budget bill. Duke Kentucky is granted 60 days from the issuance date of Ms. Eichelberger's next bill after service of this Order. If Ms. Eichelberger withdraws from the budget billing program, Duke Kentucky shall reconcile her account and adjust her bill accordingly on the first bill after her first meter reading after service of this Order.

Duke Kentucky's request to add new budget billing language to all budget billing customers' bills is not the subject of this case. If Duke Kentucky wishes to make changes to its bills, the Commission will review any revisions made via the electronic tariff filing system.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for rehearing/clarification is denied.
2. On its own motion, the Commission grants a deviation from its April 19, 2024 Order. Duke Kentucky shall, within 60 days from the issuance date of Ms. Eichelberger's next bill after the service of this Order, establish a new gas and electric settle-up calculation and calculation of a new electric budget billing amount consistent with the April 19, 2024 Order.
3. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAY 28 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

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