



the old meter was 3186, for a total usage of 10 ccf from May 12, 2022, to June 10, 2022.<sup>4</sup> On June 16, 2022, Duke Kentucky sent Mr. Horton a bill for the billing cycle from May 12, 2022, to June 13, 2022, indicating usage of 18 ccf, which included 8 ccf billed for usage from June 10, 2022 to June 13, 2022.<sup>5</sup> Mr. Horton made an informal complaint regarding his usage, and Duke Kentucky provided him a credit for 8 ccf,<sup>6</sup> admitting after verifying that the new meter still read at “0000” that it had incorrectly input the starting reading in its system.<sup>7</sup>

On June 29, 2022, Duke Kentucky tested the meter, based on its stated policy to test all removed meters,<sup>8</sup> although Duke Kentucky has also characterized this test as a periodic test.<sup>9</sup> Mr. Horton did not request a meter test.<sup>10</sup> Upon testing, the meter was found to be at 99.23 percent accuracy at 100 percent capacity and 100.16 percent accuracy at 20 percent capacity.<sup>11</sup> Duke Kentucky then sent the meter to a third-party for recycling on June 29, 2022.<sup>12</sup>

Mr. Horton filed a formal complaint on July 27, 2022, alleging that usage of 10 ccf was too high for the period from May 12, 2022, to June 13, 2022. He obtained from Duke

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<sup>4</sup> Answer at 1-2.

<sup>5</sup> Duke Kentucky’s Response to Commission Staff’s First Request for Information (Duke Kentucky’s Response to Staff’s First Request), Item 2 (Attachment).

<sup>6</sup> Duke Kentucky’s Response to Staff’s First Request, Item 2 (Attachment).

<sup>7</sup> Answer at 2.

<sup>8</sup> Duke Kentucky’s Response to Staff’s First Request, Item 1(a).

<sup>9</sup> Duke Kentucky’s Response to Staff’s Third Request, Item 2.

<sup>10</sup> Steven Horton’s Response to Commission Staff’s First Request for Information, Item 1.

<sup>11</sup> Duke Kentucky’s Response to Staff’s First Request, Item 3 (Attachment).

<sup>12</sup> Duke Kentucky’s Response to Commission Staff’s Second Request for Information, Item 1.

Kentucky a history of his monthly usage dating back to 2014, showing that from 2015 to 2019, his usage for the billing cycle ending in June was 0 ccf, and for 2020 and 2021 was 2 ccf. Based on his prior June usage of 2 ccf, Mr. Horton sought a refund for 8 ccf of usage. He also complained that Duke Kentucky was unable to produce the meter when he asked for a photo of its final reading by email on July 13, 2022.

#### LEGAL STANDARD

Diaphragm displacement gas meter testing is governed by 807 KAR 5:022, Section 3(2)(a)(2), which contains testing parameters:

Meters removed from service for periodic testing shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty (20) percent and 100 percent of the rated capacity of the meter based on five-tenths (0.5) inch water column differential and results of these tests algebraically averaged to determine accuracy. If error is less than two (2) percent, this shall be reported as the "as found" test. If error is more than two (2) percent, two (2) additional tests shall be made at twenty (20) percent and 100 percent, and the average of these three (3) tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

Commission Regulation 807 KAR 5:006, Section 11(2)(a), allows a bill adjustment “[i]f test results on a customer’s meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for another reason . . . .”

Commission Regulation 807 KAR 5:006, Section 19(1)(a), states that “[a] utility shall make a test of a meter upon written request of a customer if the request is not made more frequently than once each twelve (12) months. Commission Regulation 807 KAR 5:006, Section 19(1)(d), states:

The utility shall maintain a meter removed from service for testing, in a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

Under 807 KAR 5:006, Section 19(2), “[a]fter having first obtained a test from the utility, a customer of the utility may request a meter test by the commission upon written application. Section 19 is entitled “Request Tests.”

### DISCUSSION AND FINDINGS

Duke Kentucky was not required to test the meter or maintain it after removal because the complaint had not been filed yet when it was recycled, and Mr. Horton did not request a test in writing. Although no precedent interprets application of 807 KAR 5:006, Section 19(1)(d), the “Request Test” title of the section and reference to an investigation indicate that the maintenance requirements apply only when a utility is investigating a case triggered by a test request or filing of a complaint. Here, the meter was not removed from service because of a customer’s request to have the meter tested or a complaint. Instead, the meter was removed for either a periodic test or because it was already scheduled to be removed from service and recycled, or both.<sup>13</sup> If Mr. Horton had requested a test or filed his complaint before the meter was destroyed on June 29, 2022, Duke Kentucky would have been required to maintain the meter for six months to allow him to request that the Commission perform its own test or for the Commission to

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<sup>13</sup> Duke Kentucky’s responses on the reason for the testing differ; however, neither reason triggers a requirement to maintain the meter for a period of time.

order an additional test upon its own motion. Absent the existence of a request or complaint at the time the meter was sent to be recycled, the Commission finds that Duke Kentucky was not required to maintain the meter for a period of time.

Regardless of whether the test was a required periodic test or a non-required test due to replacement, Duke Kentucky performed such a test. Since the test results did not fall outside the two percent error range for billing adjustments under 807 KAR 5:006, Section 11(2)(a), Mr. Horton must establish that he was “incorrectly billed for another reason.” There is a rebuttable presumption that when a meter test has been conducted, it is accurate.<sup>14</sup> Based on Commission precedent, higher than normal usage (under a certain amount) alone is not sufficient to overcome the presumption and establish he was incorrectly billed.<sup>15</sup> Although Mr. Horton was billed for five times more usage than the previous two June billing cycles, this alone is not sufficient to overcome the presumption.

Having reviewed the complaint and being advised, the Commission finds that Mr. Horton’s complaint should be denied. Duke Kentucky was not required to maintain the meter for a period of time because Mr. Horton did not request a test or file a complaint before the meter was recycled. The meter was tested and found to fall within the parameters set forth by regulation. Other than the amount of the usage compared to past usage, Mr. Horton did not provide evidence that he was incorrectly billed for another

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<sup>14</sup> Case No. 92-235, *Carol LaVaun Durham v. Fox Creek Rural Electric Cooperative Corp.* (Ky. PSC Nov. 9, 1992), Order at 4.

<sup>15</sup> See Case No. 2006-00212, *Robert Young Family v. Southeastern Water Association, Inc.* (Ky. PSC Feb. 26, 2007), Order at 2-3, in which a bill indicating over 100 times the previous month’s water usage and approximately five times the customer’s highest ever monthly usage did not establish incorrect billing.

reason, and therefore has not met the enhanced burden for establishing that the meter test was incorrect.

IT IS THEREFORE ORDERED that:

1. Mr. Horton's complaint against Duke Kentucky is denied.
2. A copy of this Order shall be served upon Mr. Horton by U.S. mail to 933 Hawkshead Lane, Erlanger, Kentucky 40108.
3. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
JUL 25 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Steven Horton  
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