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August 28, 2013

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PUBLIC SERVICE
COMMISSION

Jeff Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615, 211 Sower Boulevard
Frankfort, KY 40602-0615

Dear Mr. Derouen,

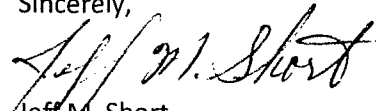
Please consider this letter as my response allowed by the PSC order of August 20 associated with case # 2013-00287. My comments below are numbered in correlation with the KU responses to the formal complaint.

1. Agreed - no response.
2. Agreed - KU has been polite, timely and complete in providing information. It was the content of their information that led up to my original letter dated May 14.
3. To find the IREC Best Practices quote regarding Net Metering on the DSIRE website:
 - a: Go to the DSIRE home page at "<http://www.dsireusa.org/>"
 - b: Click the "DSIRE SOLAR" button shown in the upper left corner.
 - c: Click the "Solar Policy Guide" button shown along the left hand side.
 - d: Click "Net Metering" at the bottom under "Rules, Regulations & Policies".The quoted practice is listed as the fifth bullet point in the best practices list. Although not legally binding, both quotes are relevant since they are resources available to the general public which describe KY's net metering policies and thus influence the public expectation and understanding of our laws, just as they did for me. I maintain that KY laws are consistent with both quotes.
4. KU can confirm my TOU residential electricity usage patterns over previous flat rate periods; namely my TOU load shift profile, my 19+% TOU savings over flat rates and my success in energy conservation. The load shift profile data are particularly relevant to this case since the conflict the KU crediting policy creates undermines the consumers incentive to load shift. The savings potential of TOU rates for consumers is largely a function of effective load shifting. In my case, the ongoing process of shifting my load provides insight which contributes to conservation. To undermine load shift incentives defeats the whole purpose of TOU rates.
5. Incorrect. I do not allege that KU's tariff does not comply with my reading of KRS 278.466. I do allege that the KU time binning policy for handling credits is inconsistent with the intent of KRS 278.466(3). Their policy of locking credits to TOU periods is not defined or disclosed in their Rider NMS, in Rate LEV or in Kentucky's Net Metering Statutes. I was advised of this policy by a recent email response from KU to my inquiry about billing structure. I recognized the conflict it creates by virtue of my desire to participate in both the Rate LEV tariff and Rider NMS. Whether the policy of locking credits to TOU periods is consistent with the governing statute is not a question that is precluded from review by the PSC, nor is my request for a staff opinion that is being treated by the Commission as a formal complaint, barred by collateral estoppel. The adopted net metering tariff did not elaborate on the statutory language and therefore the issue was not determined by the adoption or approval of the KU tariff.

6. I claim no harm. I am avoiding it by delaying investment in a PV generator and application for net metering pending resolution of the conflict created by KU's crediting policy. Until such resolution, I will not install PV since the policy renders it impractical in my view. Shifting my load towards the peak period is inconsistent with my own energy conservation objectives and with the purpose of Rate LEV, under which I hope to continue receiving service. Without shifting my load towards peak, I could not achieve a reasonable return on any PV investment since I could not otherwise access the accumulating value of excess kWh credits.
7. I do not believe my claims are incorrect as a matter of law. It appears that KU would have their interpretation of our statute become law when in fact our law is defined by the original intent of KRS 278.466(3); that TOU rates and NEM be available without the conflict their combination currently produces. Our statute states that credits will be "accounted for" (implying monetization); no where does it say that credits cannot be monetized in the process of accounting for them. When monetization is applied, load shift incentives are strengthened when TOU and net metering are combined because they become tied to the consumers return on investment while the conflict I identify disappears, exposing the statutes original intent. I strongly disagree with the last sentence of the KU response #7 and assert that KRS 278.466(3) certainly does permit KU to "do otherwise" and in fact intends that they "do otherwise" as the correct application of our laws. Their crediting policy for TOU excess generation is at odds with both the language and the intent of KRS 278.466 (2008). KRS 278.466(3) reflects that the General Assembly was aware that under time of day pricing, the cost and the value of electricity used during peak periods (and that generated) is greater than off-peak periods (or off-peak generation). Thus, the General Assembly specified that the electricity fed back into the grid under a TOU pricing tariff should be "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." The existing time-of-use agreement was referenced in order to establish the value of the electricity generated, just as it does the cost of use at that particular time of day. It does not in any manner indicate that the net metering credit that is created can only be utilized during the same time period (i.e. peak) in which it was generated. As a matter of statutory construction, the KU crediting policy cannot be squared with either the plain language of the statute or the underlying intent of encouraging net metering.
8. In my understanding, installing a PV generator for the primary purpose of reducing net energy consumption is more in line with Rider NMS than with Rider SQF.
9. The conflict identified in the combination of Rate LEV and Rider NMS is real despite KUs repeated unwillingness to acknowledge it. If someone installs a PV generator correctly sized to offset most of their usage (consistent with the KU stated purpose of Rider NMS) and maintains a load shift profile where the majority of usage is during the off-peak period, kWh credits will accumulate in the on-peak and intermediate TOU periods thus providing incentive to use more electricity during those periods (against the KU stated purpose of Rate LEV.) Again I offer Chart 3 from my original letter as evidence of this conflict in load shift incentives. I do not expect to experience "extra" financial benefit by participating in Rider NMS. I do expect to realize the exact benefit which our law intends that all KY consumers should expect; the fair retail value for electricity that flows onto the grid in accordance with the tariff agreement in effect and consistent with the time dependent value of electricity in TOU cases.
10. No response

I reiterate the content of my original letter and introduce no new arguments to this case. Our statute appears to have been misinterpreted. I respectfully request that it be clarified on behalf of all citizens subject to the force of law that any statute open to interpretation may come to carry. My concern is that the policy of locking kWh credits to TOU periods has only recently been exposed thru its use in pilot programs but which KU presents as the law while our new programs like TOU, NEM and Rate LEV that are intended to benefit our consumers, our Commonwealth and our society in general remain in conflict and subdued along with our "real" law which is carried in our statutes original intent. Certainly, the introduction of new programs like Rate LEV and Rider NMS while rendering their combination "in conflict" by billing policies is not an effective testing or deployment strategy and will limit their success among KY consumers. I hope you will agree that TOU "time binning" as part of a crediting policy for net excess generation is a creation of our utilities and not our statutes and that such a policy will not have positive impact on the growth of new energy management programs in KY and is thus worthy of review by those responsible for confirming the correct application of our laws.

Sincerely,



Jeff M. Short

cc: Allyson K. Sturgeon, LG&E and KU Energy LLC