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March 21, 2014

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Jeff M. Short v. Kentucky Utilities Company
Case No. 2013-00287

Dear Mr. DeRouen:

Enclosed please find, for filing, the original and ten (10) copies of Kentucky Utilities Company's Motion to Dismiss in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our officer courier.

Yours very truly,


Kendrick R. Riggs

KRR:ec
Enclosures as mentioned
cc: Jeff M. Short

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

JEFF M. SHORT,

COMPLAINANT

v.

KENTUCKY UTILITIES COMPANY,

DEFENDANT

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CASE NO. 2013-00287

MOTION TO DISMISS OF KENTUCKY UTILITIES COMPANY

Kentucky Utilities Company (“KU”), by counsel, respectfully asks the Kentucky Public Service Commission (“Commission”) to dismiss Mr. Short’s complaint because he lacks standing to bring the complaint; he lacks the direct interest in the rate of which he complains necessary to bring a complaint under KRS 278.260(1). In the alternative, the Commission should dismiss Mr. Short’s complaint because it is a merely hypothetical grievance not yet ripe for decision. In the alternative, the Commission should dismiss Mr. Short’s complaint because he has no authority to represent interests other than his own.

Mr. Short is a KU customer who takes service under Rate LEV (Low-Emission Vehicle Service) at his residence.¹ Rate LEV is a time-of-use rate with three seasonally differentiated pricing periods: peak, intermediate, and off-peak.² Mr. Short says he is now considering acquiring photovoltaic generating units (“PV”) for his home and becoming a net metering customer while on Rate LEV, but he has not yet done so: “I have delayed an application for NEM [net metering] due to the conflict created by the policy and my own conservation

¹ Complaint at 1.
² Kentucky Utilities Company, P.S.C. No. 16, Original Sheet No. 79.1.

objectives.”³ The crux of Mr. Short’s complaint is that if he installs PV at his home and if he becomes a KU net-metering customer and if his PV produces more energy in Rate LEV’s peak pricing period in a given billing period, KU will not permit him to use his peak-period kWh credits to offset his energy usage in other pricing periods; rather, KU would permit him to use the peak-period credits to offset future billing periods’ peak-period energy usage.⁴ Therefore, Mr. Short is complaining about a rate under which he is not now taking service—indeed, a rate under which he might never take service—and is further complaining about a purely hypothetical outcome that might eventuate if he took service under Rider NMS (Net-Metering Service) at some point in the future, assuming a number of other events occur.

The Commission has repeatedly dismissed complaints brought by persons who lacked standing because they had no present interest in the rate or service of which they complained. The Commission’s decisions are in accordance with the statute governing complaints against utilities, which statute requires a rate complainant to have a direct interest in the rate at issue:

The commission shall have original jurisdiction over complaints as to rates or service of any utility, *and upon a complaint in writing made against any utility by a person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory*, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.⁵

The Commission’s orders applying the “directly interested” standard show that standing under KRS 278.260(1) requires a complainant neither to be a customer of the defendant utility,⁶ nor to

³ Complaint at 2.

⁴ Complaint at 2.

⁵ KRS 278.260(1) (emphasis added).

⁶ See *In the Matter of Power Dev. Sys., Inc., v. Ky. Utils. Co.*, Case No. 9456, Order (Feb. 27, 1986) (“Under KRS 278.260, any person directly interested in the rates or service of any utility may file a complaint with the Commission. Thus, the statute does not require that complaints be made only by customers.”).

have a direct financial interest in the subject matter of the complaint.⁷ But standing does require the complainant to have some *present interest* in the rate or service at issue. For example, the Commission dismissed a rate complaint brought by a water utility customer concerning service to the customer's ice-skating rink after the owner sold the rink.⁸ The Commission similarly dismissed a complaint for lack of standing after the complainant, who had claimed a water district had wrongfully denied service to his property, sold his property prior to concluding the case.⁹ These Commission orders demonstrate that though the complainant's interest may be somewhat attenuated, it must be a present interest in the rate or service at issue for the complainant to have standing to proceed. Here, Mr. Short lacks the requisite present interest.¹⁰ He does not take net-metering service under Rider NMS—the rate at the heart of his complaint—and he does not even possess the property that would make him eligible to take service under Rider NMS, i.e., an eligible generating facility listed in KRS 278.465(2). Because Mr. Short lacks any present interest in the rate at issue in his complaint, the Commission must dismiss his complaint because Mr. Short lacks standing to bring it.

⁷ See *In the Matter of W. Glenn Hogan v. Spanish Cove Sanitation*, Case No. 94-346, Order (Feb. 10, 1995) (“KRS 278.260(1), which governs complaints as to the Commission, does not require that a party have a direct financial interest in the subject matter of the complaint.”).

⁸ *In the Matter of Ken Meredith v. Warren Cnty. Water Dist.*, Case No. 2005-00313, Order (Oct. 17, 2007) (“As Mr. Meredith no longer has ownership interest in Greenwood Skate Center, he is not directly interested in the rates that Warren District charges to that business concern.”).

⁹ *In the Matter of Jeffrey Charles Quarles v. Peaks Mill Water Dist.*, Case No. 2005-00437, Order (May 22, 2006) (“Complainant states in his April 28, 2006 filing that he has sold to a third party the property for which he requested service. ... Because the Complainant now lacks standing to pursue this matter, the Commission finds that this case should be dismissed.”).

¹⁰ That Mr. Short's complaint concerns rates, not service, is plain from the definitions of both terms found in KRS 278.010(12) and (13). Mr. Short's complaint addresses KU's crediting of net-excess generation under a time-of-use rate structure; it is a complaint about a “rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof.” (KRS 278.010(12), defining “rate.”) Mr. Short's complaint does not address the quantity or quality of electricity KU supplies, which would be a complaint about service: “‘Service’ includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility.” (KRS 278.010(13).)

Moreover, the Commission should consider the potential consequences of permitting Mr. Short's complaint to proceed despite his lack of any present interest in the rate at issue. First, it would effectively excise "directly interested" from KRS 278.260(1), which is the General Assembly has required. Second, as a practical matter, it would remove all barriers to potential rate complaints. Any person could claim a possible future interest in a rate and have standing to bring a complaint; any individual with only a dream of opening an ice-cream parlor—if the financing works out, and if the timing is right, and if there is boom in local ice-cream consumption—could bring a complaint concerning a utility's rates for small businesses. Such complaints are precisely what the "directly interested" standing requirement was intended to prevent; there is no other reason for the requirement to exist. But permitting Mr. Short's complaint to proceed would effectively eliminate the requirement. Therefore, the Commission must dismiss his complaint according to the requirement of the statute and to avoid opening the floodgates of potential complaints.

In the alternative, regardless of the merits of Mr. Short's interpretation of Kentucky's net-metering statutes and how he believes they should be applied—and KU believes such an interpretation is meritless—Mr. Short's complaint cannot be ripe for decision because none of the events that he believes would constitute harm have occurred. Kentucky courts have consistently declined to decide matters that are not yet ripe.¹¹ Hypothetical questions, such as Mr. Short's, are precisely such unripe claims: "Questions that may never arise or are purely advisory or hypothetical do not establish a justiciable controversy."¹² Although the Commission

¹¹ See *Nordike v. Nordike*, 231 S.W.3d 733, 739 (Ky. 2007) ("It is a fundamental tenet of Kentucky jurisprudence that courts cannot decide matters that have not yet ripened into concrete disputes."); *Associated Indus. v. Commonwealth*, 912 S.W.2d 947, 951 (Ky. 1995) ("Within the context of federal law, it is understood that Article III of the United States Constitution permits only adjudication of actual cases and controversies. An actual controversy requires that a controversy be ripe for adjudication.").

¹² See *Nordike*, 231 S.W.3d at 733; *Associated Indus.*, 912 S.W.2d at 951 ("Further, the ripeness doctrine requires the judiciary to refrain from giving advisory opinions on hypothetical issues.").

is not strictly bound by these doctrines of justiciability,¹³ it has followed them. For example, the Commission has held that billing disputes are not ripe for decision until a bill is rendered and disputed by the customer.¹⁴ Here, Mr. Short is doing the very same thing: he is complaining about a bill he has never received, namely a bill for service under Rate LEV and Rider NMS. Until he receives such a bill, his complaint cannot be ripe for the Commission's decision, and the Commission must dismiss it.

In the alternative, to the extent Mr. Short is attempting to represent the interests of others, his customer complaint must be dismissed because *pro se* litigants cannot represent interests other than their own.¹⁵ 807 KAR 5:001 Section 4(4) provides that a "person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney ..." While KU maintains that Mr. Short does not have the requisite interest to bring such a complaint, it is now evident that Mr. Short is going forward to represent the interests of all KU customers.¹⁶ Further, Mr. Short attempts to cite error in KU's position that his complaint is merely hypothetical by noting that there are existing KU customers taking service under Rate LEV while participating in Rider NMS.¹⁷ This is not accurate. KU's records show there are no

¹³ See *In the Matter of: City of Newport v. Campbell Cnty. Ky. Water Dist. and Kenton Cnty. Water Dist. No. 1 and Charles Atkins and Steven J. Franzen v. Campbell Cnty. Ky. Water Dist.*, Case No. 89-014, Order (May 31, 1989).

¹⁴ See *In the Matter of: The Application of Blue Grass Energy Coop. Corp. for an Order Interpreting KRS 278.225*, Case No. 2008-00086, Order at 2 (Apr. 14, 2008) ("Until a bill is rendered and disputed by a customer, a billing dispute is not ripe for decision by the Commission.").

¹⁵ See *In the Matter of: Application of Water Serv. Corp. of Ky. For an Adjustment of Rates*, Case No. 2008-00563, Order (May 5, 2009) ("Ms. Potter has identified herself as acting *pro se*, and a *pro se* litigant cannot represent interests other than her own. (citing *Newson v. Norris*, 888 F.2d 371, 281(6th Cir. 1989)).

¹⁶ Complaint at 2 ("Please consider my request on behalf of all KY consumers, in the interests of our utility companies and in the interests of our commonwealth ...); Complainant Testimony Summary at 2 ("Throughout this proceedings in this case, KU has repeatedly misrepresented my position as one of personal financial gain. My objective has always been to help create an environment in KY where consumers can contribute to energy conservation, load shifting and energy generation to reduce our overall emissions in the interest of the environmental and health benefits these actions can produce for society ...").

¹⁷ Complainant Testimony Summary at 2 ("KU argues that my complaint 'asks the Commission to answer a hypothetical question by interpreting KRS 278.466 at variance with its stated language.' I submit that their argument has two errors: 1. There are existing TOU/NEM consumers in KY suffering under the KU policy rendering my request as real and not hypothetical.").

customers currently taking service under Rate LEV while participating in Rider NMS. Mr. Short's personal complaint is hypothetical; any customers to which he refers may have standing to bring a complaint of their own, but have not done so. Because Mr. Short has no authority to represent any interest other than his own, the Commission must dismiss his complaint.

WHEREFORE, Kentucky Utilities Company respectfully asks the Commission to:

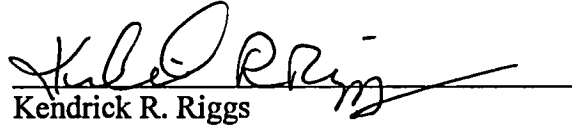
1. Dismiss Mr. Short's complaint without prejudice because Mr. Short lacks standing under KRS 289.260(1) to bring a rate complaint concerning Rider NMS while he is neither taking service under it, nor even meets the requirements to take service under it.

2. In the alternative, dismiss Mr. Short's complaint for being unripe because the harm of which he complains is purely hypothetical, i.e., he has not received a bill under Rate LEV and Rider NMS that he may dispute.

3. In the alternative, dismiss Mr. Short's complaint for unlawfully attempting to represent the interests of others.

Dated: March 21, 2014

Respectfully submitted,



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*Counsel for Defendant,
Kentucky Utilities Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion to Dismiss of Kentucky Utilities Company was served upon the following person by first class, United States mail, postage prepaid, on the 21st day of March 2014:

Jeff M. Short
9180 KY Highway 78
Stanford, KY 40484



*Counsel for Defendant,
Kentucky Utilities Company*