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

April 24, 2014

VIA HAND DELIVERY

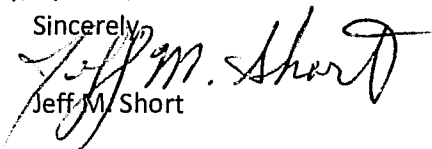
Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

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 the "Post-Hearing Brief" of Jeff M. Short in the above referenced case. I have mailed identical copies of this letter and my "Brief" document to all parties on the cc list below via the US mail earlier today, April 24, 2014.

Sincerely,

  
Jeff M. Short

Enclosure as mentioned

cc: Ed Staton  
Allyson K. Sturgeon  
Stoll Keenon Ogden PLLC  
W. Duncan Crosby  
Kendrick R. Riggs

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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APR 24 2014

PUBLIC SERVICE  
COMMISSION

JEFF M. SHORT

COMPLAINANT )

)

V. )

CASE NO.

2013-00287

KENTUCKY UTILITIES COMPANY )

)

DEFENDANT )

)

**POST-HEARING BRIEF OF JEFF M. SHORT**

## INTRODUCTION

This post-hearing brief is submitted by Jeff M. Short, Complainant in this matter. Pursuant to the Commission's direction at the close of the evidentiary hearing on March 27, 2014, the parties were directed to file simultaneous briefs within twenty days of the date of hearing.

### STATEMENT OF FACTS

The material facts in the record of this case are not in dispute.<sup>1</sup>

Mr. Short is a customer of Kentucky Utilities (KU), and currently takes service under KU's Low Emission Vehicle Service Rate, (RateLEV.6).

Rate LEV contains three seasonally differentiated time-of-use rate periods: peak, intermediate, and off-peak. Rate LEV has the same Basic Service Charge as KU's standard residential rate, (Rate RS), and lacks a demand charge, as does Rate RS. Only the energy rates differ between the two rate schedules; Rate RS has a flat energy rate of \$0.07744 per kWh, whereas the LEV peak rate is \$0.14297 per kWh, the intermediate rate is \$0.07763 per kWh, and the off-peak rate is \$0.05587 per kWh. After beginning service under Rate LEV, Mr. Short shifted much of his electric usage to the off-peak period of Rate LEV, to achieve the resulting savings, as was acknowledged by KU. Mr. Short subsequently investigated the practicability of installing a PV electric generating system at his residence, and inquired of KU concerning potentially adding service under KU's Net Metering Service Standard Rate Rider, Rider (NMS.11). KU acknowledges that it informed Mr. Short that he could take service under Rate LEV and Rider NMS, but that any net-excess generation he produced in a particular time period could be credited only against later

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<sup>1</sup> The statement of facts is drawn largely from the March 7 Pre-Hearing Comments of Kentucky Utilities Company.

~~usage in the same time period, e.g., peak net-excess generation could be used to offset only~~  
subsequent peak net consumption.

Mr. Short sent a letter to the Commission on May 14, 2013 regarding his interest in combining net metering with TOU (time-of-use) rates. In part, the letter noted:

Surprisingly, when I contacted my utility about NEM I was informed that excess customer generated kWhs would not acquire value as they flowed thru the meter but that they would remain without value as a “kwh credit” for the life of the account. **I was also advised that a kWh credit could not be used to offset usage in any IOU period other than the one where it was generated. Such “locking” of credits to specific TOU periods creates conflict in that the load shift incentives of TOU rates are undermined as consumers would shift demand to the least expensive period, that period being the one having available credits. The policy renders solar NEM impractical for TOU customers as TOU demand is desirably off-peak and the majority of PV production naturally occurs in the other two TOU periods.** It appears that my utility would welcome my load shift but penalize me if I go beyond that and consider solar NEM, which I perceive as my best option. Regardless, I have delayed an application for NEM due to the conflict created by the policy and my own conservation objectives.

By Order dated July 15, 2013, the Commission determined to treat the letter as a complaint, and directed Kentucky Utilities (KU) to respond.

#### SUMMARY OF ARGUMENT

This matter is ripe for review. To the extent that the judicial doctrine of ripeness has any applicability to a statutorily-authorized administrative proceeding, there is a current and justiciable controversy over the proper interpretation and application of KRS 178.466 to customers seeking to combine LEV and net metering tariffs.

The policy of KU of requiring that distributed generated electricity be utilized in the same time of day period in which it is generated, is unsupported by the statute, inconsistent with the guidelines adopted by the Commission, and at variance with the announced goals of the General Assembly of encouraging conservation of energy, deployment of renewable energy, curtailment

of carbon emissions, and encouragement of distributed renewable generation through net metering.

#### I. THIS MATTER IS RIPE FOR REVIEW

KU disputes that this matter is ripe for consideration by the Commission, since Complainant has not yet installed a PV system. KU is mistaken.

It is undisputed that Mr. Short is a current KU customer who is taking electricity under the LEV rate pilot. It is undisputed that Mr. Short has already suffered harm in that he has “delayed an application for NEM [net metering] due to the conflict created by the [KU] policy and my own conservation objectives.” May 14, 2013 Letter from Mr. Short to Public Service Commission.” The testimony at hearing reflected that Mr. Short finds it uneconomic to install solar photovoltaic capacity and to participate in the net metering rider (NMR) due to the conflict between the KU policy, which would require that Mr. Short increase his peak and intermediate electricity usage (the periods during which solar power would be generated by a PV system) in order to be able to make use of the accumulated credits, and the LEV pilot, which encourages off-peak use of electricity for charging electric vehicles by providing “time-of-day” pricing.

“Ripeness” is a *judicial* concept grounded both in constitutional and prudential concerns that seeks to prevent courts from exercising jurisdiction where adjudication would be premature. *W.B. v. Commonwealth*, Ky. 388 S.W.3d 108 (2012). As such, it has no applicability to an administrative proceeding authorized by statute.

This matter began as a request from Mr. Short to the Public Service Commission for a staff interpretation. As noted in the Commission Order of July 15, 2013,

On May 15, 2013, the Commission received a letter from Jeff M. Short requesting Commission Staff to review the provisions of the net metering statute, as set forth in KRS 278.466, and express Staffs interpretation of that statute and the Commission’s net metering policies. Specifically, Mr. Short references his interest in receiving electric

service under time-of-use rates available in the Low Emission Vehicle Service tariff, which is offered by Kentucky Utilities Company (“KU”), and combining the time-of-use rates with net metering. Mr. Short suggests that any net excess generation credited to a net metering customer should be accounted for by the utility at a dollar value, not in units of electricity, as KU does. Based on Mr. Short’s belief that crediting net excess generation in units of electricity discourages load shifting and is contrary to the intent of the net metering statute, he requests on behalf of all Kentucky consumers a Staff opinion on this issue.

Based on a review of Mr. Short’s letter and being otherwise sufficiently advised, the Commission finds Mr. Short’s letter should be treated as a formal complaint against his electric supplier, KU, and his letter should be deemed filed as a complaint as of the date of this Order. Therefore, KU is hereby notified that it has been named as a defendant in a formal complaint, a copy of which is attached hereto.

July 15, 2013 *Order To Satisfy Or Answer*, Case No. 2013-00287.

It was the **Commission** that determined the request for staff interpretation to present a sufficiently immediate and current controversy between Mr. Short, who had indicated to KU his interest in combining his current LEV rate service with net-metering, and KU, whose policy of requiring that electricity generated during a period be credited and used only during that period where a customer was purchasing electricity under time-of-use pricing had already caused Mr. Short to delay purchase and installation of a PV system. It is clear from the record that there is a present controversy regarding the interpretation and application of the net metering statutes, and there is no reason to delay the resolution of the question of law presented by the complaint. The Commission should reject KU’s cramped interpretation of the concept of “ripeness” would require Mr. Short to incur the costs associated with a PV system with no assurance that the use of net metering under the NMR, which would make the installation of the system economically possible for him.

II. THE KU POLICY OF REQUIRING THAT CREDITS GENERATED BY DISTRIBUTED SOLAR ELECTRICITY THAT IS NET METERED INTO THE KU SYSTEM CAN ONLY BE USED DURING THAT SAME TIME PERIOD WHERE A CUSTOMER IS UNDER TIME-OF-DAY PRICING, IS INCONSISTENT WITH THE PLAIN LANGUAGE OF KRS 278.644 AND WITH THE APPROVED KU TARIFF

This matter presents a narrow but important question of law for consideration by the Commission – does KRS 278.644 allow a utility to restrict the application of credits created by distributed generation, to the time period in which the distributed electricity was generated, where the consumer is purchasing electricity under a time-of-day or time-of-use tariff?

KRS 278.644 provides in full that:

- (1) Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during the previous year, the obligation of the supplier to offer net metering to a new customer-generator may be limited by the commission.
- (2) Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions. Any additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator's expense. If additional meters are installed, the net metering calculation shall yield the same result as when a single meter is used.
- (3) The amount of electricity billed to the eligible customer-generator using net metering shall be calculated by taking the difference between the electricity supplied by the retail electric supplier to the customer and the electricity generated and fed back by the customer. If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and 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.
- (4) Each net metering contract or tariff shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.
- (5) The following rules shall apply to the billing of net electricity:
  - (a) The net electricity produced or consumed during a billing period shall be read, recorded, and measured in accordance with metering practices prescribed by the commission;
  - (b) If the electricity supplied by the retail electric supplier exceeds the electricity generated and fed back to the supplier during the billing period,

~~the customer-generator shall be billed for the net electricity supplied in accordance with subsections (3) and (4) of this section;~~

(c) If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the excess kilowatt hours in accordance with subsections (3) and (4) of this section. This electricity credit shall appear on the customer-generator's next bill. Credits shall carry forward for the life of the customer-generator's account;

(d) If a customer-generator closes his account, no cash refund for residual generation-related credits shall be paid; and

(e) Excess electricity credits are not transferable between customers or locations.

(6) Electric generating systems and interconnecting equipment used by eligible customer-generators shall meet all applicable safety and power quality standards established by the National Electrical Code (NEC), Institute of Electrical and Electronics Engineers (IEEE), and accredited testing laboratories such as Underwriters Laboratories.

(7) An eligible customer-generator installation is transferable to other persons or service locations upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in KRS 278.467 and in subsection (6) of this section.

(8) Any upgrade of the interconnection between the retail electric supplier and the customer-generator that is required by commission-approved tariffs for the purpose of allowing net metering shall be made at the expense of the customer-generator.

KRS 278.644.

The specific language at issue in this case is the language in subsection (3), providing that (3) “[i]f time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and 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.” In KU’s opinion, the requirement of the statute that electricity fed back into the grid be “accounted for at the specific time it is fed back to the electric grid” where



~~time-of-day or time-of-use billing is in place, authorizes the utility to restrict the redemption of any net electricity credits by the eligible customer-generator to the same time of use or time of day period that the distributed electricity is generated.~~

It is clear that under KRS 278.644, an eligible customer-generator generating electricity under a net metering arrangement could utilize that generated electricity to offset usage incurred during a different time of day, week, month, or year than the hour, day, week, month, or year in which it was generated, for the life of the customer-generator's account, and that excess kilowatt-hours generated during a billing period would be credited on the customer-generator's next bill.

The question before the Commission is whether KU can artificially constrain the use of the credits generated, where the eligible customer-generator is participating in a time-of-day or time-of-use rate plan (such as the LEV rate that Mr. Short uses), by limiting the use of credits to the time-of-day period in which they were generated. KRS 278.644 does not admit to such a cramped and narrow reading.

The first sentence of subsection (3) mandates that the "amount of electricity billed to the eligible customer-generator using net metering shall be calculated by taking the difference between the electricity supplied by the retail electric supplier to the customer and the electricity generated and fed back by the customer." Subsection (5) provides rules that apply to all net metering billing, and provides that the crediting of electricity generated and fed back to the supplier over that consumed during a "billing period" shall be credited to the customer. The concept of "netting" out electricity used, and generated, occurs over the billing cycle. An interpretation of the phrase "accounted for" in the second sentence of KRS 278.644(3) as limiting the use of any credit to the same time of day as when it is generated, causes the use of the time-of-use pricing under LEV tariff to punish a customer seeking to be a customer-

~~generator, since successful use of the former would cause credits generated by the latter to be of little utility to the eligible customer-generator.~~

The inclusion of specific language in KRS 278.644 providing that where time-of-day (TOD) or time-of-use (TOU) metering is used, the electricity fed back to the electric grid by the eligible customer-generator “shall be net-metered and accounted for at the specific time it is fed back to the electric grid” reflects that the General Assembly contemplated that customers might combine time-of-use pricing and net metering of solar and other renewable electricity. To interpret the statutory language regarding “accounting for” generated electricity as restricting when accumulated electricity credits can be applied, as suggested by KU, places the two rate structures in direct and unnecessary conflict and imposes an additional burden on those using TOU or TOD pricing that diminishes the value of net metering to such customers.

The statute is susceptible to another interpretation, one that would harmonize the two sentences in subsection (3). If “accounted for” is interpreted to mean that the **value** of the credited kilowatt hour is determined at the time that it is generated and fed back into the grid, but the credit, expressed as a kWh, may be redeemed in a period other than that in which the credit is generated. That reading would allow the customer-generator to utilize all credits created during a billing period, and would not require that any other customer “subsidize” the customer-generator under a TOU billing agreement, since the netting of the electricity used and generated is on a kWh basis, and the monthly energy charge that all customers pay covers non-consumption costs.

The KU policy is inconsistent with KRS 278.644 for a second reason. The statute is clear that in instances where there is a time-of-use or time-of-day tariff in effect for a net-metering customer-generator, the “electricity fed back to the electric grid by the eligible

~~customer-generator shall be net-metered and 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.~~” (Italics added).

A review of Sheet 79 of the approved tariff and billing agreement which is on the LGE-KU website at [http://www.lge-ku.com/ev/ku\\_lev\\_tariff.pdf](http://www.lge-ku.com/ev/ku_lev_tariff.pdf), says nothing concerning when credits generated under the net metering statute and tariff must be utilized, and certainly has no provision authorizing KU to constrain when the credits can be redeemed. Instead, it **accounts** for the usage of electricity during periods of time during the day – off-peak, intermediate, and peak, by assigning monetary values (costs per kWh) to usage within those periods, with a stated goal of providing an “option to customers otherwise served under rate schedule RS to encourage off-peak power for low emission vehicles.” It is that “accounting,” i.e. assignment of value, to which the statute refers when time-of-day or time-of-use pricing is in place. Lacking any provision in the approved LEV tariff that would enable KU to receive a windfall of excess distributed generation credits by artificially constraining the redemption of those credits, KU cannot out of whole cloth create such a restriction.

### III. THE KU POLICY IS INCONSISTENT WITH THE NET METERING GUIDELINES ADOPTED BY THE COMMISSION AND IS AT VARIANCE WITH THE ANNOUNCED GOALS OF THE GENERAL ASSEMBLY OF ENCOURAGING ENERGY CONSERVATION AND ENCOURAGEMENT OF DISTRIBUTED RENEWABLE ELECTRICITY GENERATION THROUGH NET METERING.

On January 8, 2009, the Commission entered an Order in Administrative Case 2008-00169, adopting a set of net metering and interconnection guidelines as mandated by Senate Bill 83 (2008). In that Order, the Commission explained the effects of SB 83 on the preexisting net metering law:

In its Order issued on May 30, 2008, the Commission initiated Administrative Case No. 2008-00169 to establish interconnection and net metering guidelines in

accordance with Senate Bill 83 ("SB 83"), which was enacted by the Kentucky General Assembly during the 2008 Regular Session and signed by Governor Steve Beshear on April 24, 2008. SB 83 amended the existing statutory requirements for the net metering of electricity, which are codified in KRS 278.465 to 278.468. The amendments are designed to increase the number of net metering customers by expanding the types and sizes of customer-owned electric generating facilities that qualify for net metering. More specifically, SB 83 included the following provisions:

1. The definition of an "eligible electric generating facility" is expanded from solar only to include wind energy, biomass or biogas energy, and hydro-energy;
2. The maximum size of eligible generators is increased from 15 kW to 30 kW;
3. The limit at which the Commission may restrict new net metering customers is increased from 0.1 % to 1 % of a retail supplier's single-hour peak load;
4. Bill credits for generation fed back to the retail supplier in excess of the electricity supplied during the billing period are carried forward for the life of the account;
5. The net metering customer is responsible for the cost of any upgrade to the interconnection that is required by an approved tariff;
6. Interconnection and net metering guidelines are to be developed by the Commission for all retail electric suppliers;

and

7. Retail electric suppliers are required to file net metering tariffs and application forms to comply with the Commission established guidelines.

January 8, 2009 Order, Case No. 2008-00169.

The Commission noted the intent of the statute, which was to *expand* the opportunities for net metering both by broadening the types of distributed renewable energy sources that would be eligible, and by increasing the maximum size and maximum number of net metering customers from 15 kW to 30 kW and from .1% to 1% of the utility's peak load.

The word "time" appears 49 times in the Commission-adopted net metering and interconnection guidelines, and in none of those appearances is there any authorization to limit credits generated by time-of-day or time-of-use eligible customer-generators to the time period

during which the credits were generated. Instead, the guidelines follow the statute in providing that the netting out and accounting for credits is to be done by “billing period.” Had the General Assembly intended to so bind the redemption of credits as KU proposes, it would have done so in clear and unmistakable terms.<sup>2</sup>

When construing the terms of a statute, an administrative agency as well as the courts are guided by KRS 446.080(1), which requires that “[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature[.]” The miserly construction adopted by KU of the phrase “accounted for” narrows considerably the utility of net metering for time-of-day or time-of-use customer-generators using solar PV installations, in a manner that is inconsistent with the remedial purpose of the statute and the liberal construction that the Commission is admonished to give to the law.

#### CONCLUSION

For the reasons stated in this brief, Complainant respectfully requests that the Commission find and determine that, as a matter of law, KRS 278.644 requires that KU allow credits generated by an eligible customer-generator to be redeemed against electricity used both within and outside of a time-of-day or time-of-use period, and that “accounting for” the electricity generated by the customer-generator in a time-of-use billing agreement allows the utility to value the generated kWhs in accordance with the rate schedule in the time-of-use tariff, but not to artificially constrain the redemption of those credits to the period in which they are generated.

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<sup>2</sup> Indeed, the language concerning time-of-day and time-of-use accounting was in the original Senate Bill 247 (2004), which limited net metering to distributed solar energy. The KU interpretation of that provision would have greatly reduced the opportunities for eligible customer-generators to combine the two concepts under the 2004 statute; an outcome contrary to the intent of the law to encourage deployment of distributed solar generation.

