

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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FEB 27 2017

PUBLIC SERVICE
COMMISSION

In the Matter of:

GLENN R. SPENCER)	
)	
COMPLAINANT)	
V.)	CASE NO.
)	2017-00050
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

COOPERATIVE'S ANSWER TO COMPLAINT

Comes Clark Energy Cooperative, Inc. ("Clark"), the defendant herein, by and through counsel, and, in response to the complainant's allegations outlined in his January 17, 2017, complaint and in compliance with the Commission's Order entered herein on February 16, 2017, to satisfy or answer the complaint, respectfully submits this response.

The complainant alleges that Clark changed the rate on his account from residential to commercial in 2010, attaching to his complaint two particular bills for the account in question from that year, the one being due 05/27/2010 showing Rate "A" and the one being due 06/27/2010 showing Rate "C". While it might be logical to conclude that a change of classification was made to the account, the reality is that the account in question has always been on a small commercial rate.

The Commission granted Clark a rate increase in 2010 that was implemented with the June 2010 billing, and Clark's rates were renamed therein (see Case No. 2009-00314). The complainant's account was on Rate "A", small commercial, prior to June 2010, and the same account has been on Rate "C", small commercial, from June 2010 to present. The facility charges were increased for all rate classes at the same time, and the relevant pages of Clark's tariff sheets are attached hereto.

The complainant also alleges that his account should not be on a commercial rate at all because he does not operate "a commercial establishment." He attaches to his complaint a two-page excerpt from the New York State Department of Agriculture and Markets website (<https://www.agriculture.ny.gov/ap/agsservices/guidancedocuments/305-a-NurseryGuideline.pdf>) in support of his proposition that nursery operations are not "commercial" but, rather, a "farm operation." And while he makes reference to growing hay, pumpkins, and sweet corn, the complainant does not describe what his nursery operation entails. It is therefore impossible to ascertain whether the complainant's nursery operation even fits within the definition he cites. Of course, implicit in the complainant's citing the above-referenced webpage is the proposition that another state's department of agriculture's definitions should apply to a Kentucky electric cooperative's rate

classifications; Clark firmly believes the New York Department of Agriculture's definitions are not applicable in this matter.

Clark further believes the complainant should, in fact, be on a commercial rate given the indicia that he is engaged in a commercial operation or business. The most obvious indication that the complainant is the proprietor of a business is the sign next to the road by his property reading "Big Oak Nursery: Owners Joe Karrick & Glenn Spencer" and displaying two phone numbers (see attached picture of said sign). The complainant holds himself out as one of the owners of this business by the very text of his public signage. So Clark's confirmation that the complainant's rate should remain commercial, upon a supervisor's visiting the location in December 2016 and seeing the sign, is entirely logical.

Another indication that the complainant operates a business on his property is the inclusion of Big Oak Nursery on the Kentucky Department of Agriculture's website, the nursery's individual webpage thereon being headed "Kentucky Department of Agriculture | Kentucky Country/Farm Store" (emphasis added; see <https://www.kyagr.com/KDAPage.aspx?id=876> and the copy thereof attached hereto). Other descriptions of Big Oak Nursery on said webpage include the heading "Wholesale Nursery Products and Produce" (emphasis added) and that its products are available in three states. Directions from the interstate to Big Oak Nursery are included on the page, and the public is invited to "Phone

Anytime" under "Hours of Operation." Clark submits that all of these details are indicative of Big Oak Nursery's being a business.

Perhaps the clearest indication that the complainant's operation is a business, however, is that it is incorporated as such: Big Oak Nursery, Inc. is an active, for-profit Kentucky corporation in good standing with the Kentucky Secretary of State, the principal *office* of which is the complainant's address and the complainant himself being the registered *agent* of the corporation (see attached copy from Kentucky Secretary of State's website). This webpage shows the nursery as having been incorporated at all times in question in this case and that its most recent Annual Report, signed by the complainant in his capacity as *Secretary*, was filed in June 2016. Not only does this seem contrary to the complainant's assertion that the nursery closed in 2015, the complainant's being listed thereon as a director and officer of this corporation certainly contradicts his characterization of the nursery as something other than a commercial enterprise.

Clark bills all electric service to businesses at a commercial rate. Given that the complainant holds himself out as a business seemingly everywhere except in his complaint, it is proper that his electric rate with Clark be commercial. It should be noted, too, that, although the complainant asserts his nursery closed in 2015, he did not contact Clark at any time prior to December 2016 to state the same or to request a rate review. While

the complainant asks that Clark reimburse him for the difference in facility charges since June 2010, Clark cannot satisfy the matter complained of because there was not an overbilling: the increase in the facility charge was due to a rate increase and not an improper rate change.

WHEREFORE, Clark Energy Cooperative, Inc. respectfully requests the following:

1) That, insofar as the relief sought is a change of the complainant's rate from commercial, this matter be dismissed as the account in question serves a business and a commercial rate is, therefore, proper; and

2) That, insofar as the relief sought is a refund of facility charges, this matter be dismissed as the complainant was not overbilled.

DATED: This 24th day of February, 2017.

Respectfully submitted,

GRANT, ROSE & PUMPHREY
51 South Main Street
Winchester, Kentucky 40391
Telephone: (859) 744-6828
Facsimile: (859) 744-6855

By: 
John S. Pumphrey

E-mail: jspumphrey@bellsouth.net

ATTORNEYS FOR
CLARK ENERGY COOPERATIVE, INC.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Answer has been served upon the complainant by mailing a true copy of same to 1705 Peeled Oak Road, Owingsville, Kentucky 40360, and upon the Commission by hand-delivering the original and ten (10) copies to the Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602, on this 24th day of February, 2017.



Of Counsel for
Clark Energy Cooperative, Inc.

For All Areas Served
Community, Town or City

P.S.C. No. 2

2nd Revision SHEET NO. 53

CANCELLING P.S.C. NO. 2

1st Revision SHEET NO. 53

Clark Energy Cooperative Inc.
Name of Issuing Corporation

CLASSIFICATION OF SERVICE

Schedule A & B: General Power Service

AVAILABILITY

Available for all non-residential general power requirements with Kilowatt (kW) demands less than 50 kW subject to established rules and regulations of the Distributor.

CHARACTER OF SERVICE

Single or three phase, 60 Hertz, at available secondary voltages.

DELIVERY POINT

The delivery point at which the secondary or utilization voltage is provided shall be specified by the Distributor.

RATES

Demand Charge: No charge for the first 10 kW of billing demand
\$5.89 per kW for all remaining billing demand

Energy Charges:

<u>Schedule A</u>	<u>Schedule B</u>	Customer Charge	
\$ 5.76	\$5.28	per kWh for all Energy	(1)
\$ 0.11351	\$0.09298		

DATE OF ISSUE July 17, 2008

DATE EFFECTIVE for ~~ORDER~~ ~~ORDER~~ rendered on and after August 1, 2009
EFFECTIVE 8/17/2009

ISSUED BY Paul H. Earl
Name of Officer

TITLE

PUBLIC SERVICE COMMISSION
 PURSUANT TO 807 KAR 5:011
 PRESIDENT & C.E.O.
 SECTION 9(1)

By Jeff D. Weaver
 Executive Director

Issued by authority of an Order of the Public Service Commission in Case No. 2008-00525 dated July 15, 2008

For All Areas Served
Community, Town or City

P.S.C. No. 2

3rd Revision SHEET NO. 53

CANCELLING P.S.C. NO. 2

2nd Revision SHEET NO. 53

Clark Energy Cooperative Inc.
Name of Issuing Corporation

CLASSIFICATION OF SERVICE

Schedule C: General Power Service

AVAILABILITY

Available for all non-residential general power requirements with Kilowatt (kW) demands less than 50 kW subject to established rules and regulations of the Distributor.

CHARACTER OF SERVICE

Single or three phase, 60 Hertz, at available secondary voltages.

DELIVERY POINT

The delivery point at which the secondary or utilization voltage is provided shall be specified by the Distributor.

RATES

\$24.46 Facility Charge-Single Phase
\$48.42 Facility Charge-Three Phase
\$0.10198 Per kWh for all energy

MINIMUM MONTHLY CHARGE

The minimum monthly charge shall be \$24.46 single phase and \$48.42 for three phase service.

DATE OF ISSUE April 28, 2010

DATE EFFECTIVE April 16, 2010

ISSUED BY Paul A. Enb
Name of Officer

TITLE PRES Burt Kintley

Issued by authority of an Order of the Public Service Commission
Case No. 2009-00314 dated April 16, 2010

KENTUCKY PUBLIC SERVICE COMMISSION	
JEFF R. DEROUEN EXECUTIVE DIRECTOR TARIFF BRANCH	
DATE OF ISSUE	DATE EFFECTIVE
ISSUED BY	TITLE
EFFECTIVE	
4/16/2010	
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)	



BIG OAK NURSERY

OWNERS

JOE KARNICK & GLENN SPENCER

859-585-8499

859-585-2565



Big Oak Nursery

Wholesale Nursery Products and Produce

Our Products

DECIDUOUS TREES-BALL&BURLAP,
EVERGREEN-BALL&BURLAP, SHRUB-
BALL&BURLAP, PUMPKIN, SWEETCORN, TOMATOES

Special News

All nursery products are ball and burlap; wire baskets on trees 1 1/2' and up - TRUCKING AVAILABLE

About Us

NURSERY SELECTIONS INCLUDE: Shade trees: Green Mountain Sugar Maple, Red Oak, Pin Oak, August Purple Ash, Heritage Birch Clump, Bald Cypress Flowering/Ornamental Trees: Crabapple (Donald Wyman, Indian Summer), White Dogwood, Galaxy Dogwood (Rutgers Hybrid:white), Kwansan Cherry, Red Bud, Dawn Redwood, Corkscrew Willow, Snow Goose Cherry, Pear (Aristocrat, Cleveland Select, Bradford) Conifers: Colorado Spruce, Norway Spruce, Serbian Spruce Deciduous Shrubs: Magnolia (Jane, Ann, Sweet Bay, Galaxy, Royal Star), Viburnum (Allegheny, Juddi, Eskimo), Cistena (Sand Cherry), Spirea (Little Princess, Shirabana, Red, Lemon Princess), Potentilla (Pink Whisper) Evergreen Shrubs: Boxwood (Green Velvet, Vardar Valley), Arborvitae (Woodward Globe, Golden Globe, Dark Green, Emerald), Mugo Pine, China Girl Holy, Juniper (Mint Julep, Gold Coast, Moonglo), Taxus Densifloris

During summer months a wide variety of garden vegetables are available.

In the Fall, our pumpkin patches are full of pumpkins in a variety of sizes.

Directions

From Lexington (I-64 East): - second Mt. Sterling exit #113 (US 60) - right onto US 60 - take the first left onto Old Owingsville Road - take the first left onto Stepstone Road - make a quick right onto KY 1331 (Howards Mill Road) - follow Howards Mill Road approximately 9 miles (it will eventually become Peeled Oak Road) - Big Oak Nursery is on the left From Morehead (I-64 West): - second Owingsville exit #121 (KY 36) - left onto KY 36 - right onto KY 965 (Preston Road) - bear right at fork in the road onto KY 1331 (Peeled Oak Road) - Big Oak Nursery is not far on the right

Hours of Operation

Phone Anytime

Here is where you can find our products:

Kentucky, West Virginia,
Ohio

Big Oak Nursery

1705 Peeled Oak Road
Owingsville, KY 40360

Phone: (606) 674-6256
Phone2: (859) 498-2054

BIG OAK NURSERY, INC.**General Information**

Organization Number	0594838
Name	BIG OAK NURSERY, INC.
Profit or Non-Profit	P - Profit
Company Type	KCO - Kentucky Corporation
Status	A - Active
Standing	G - Good
State	KY
File Date	9/14/2004
Organization Date	9/14/2004
Last Annual Report	6/21/2016
Principal Office	1705 PEELED OAK ROAD OWINGSVILLE, KY 40360
Registered Agent	GLENN R SPENCER 1705 PEELED OAK ROAD OWINGSVILLE, KY 40360
Authorized Shares	1000

Current Officers

President	<u>JOE KARRICK</u>
Secretary	<u>GLENN R SPENCER</u>
Director	<u>JOE KARRICK</u>
Director	<u>GLENN SPENCER</u>

Individuals / Entities listed at time of formation

Incorporator	<u>GLENN R SPENCER</u>
Incorporator	<u>JOSEPH A KARRICK</u>

Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

<u>Annual Report</u>	6/21/2016	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	5/14/2015	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/26/2014	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	5/23/2013	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/25/2012	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	4/26/2011	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	5/18/2010	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/10/2009	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	3/28/2008	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	1/19/2007	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	2/17/2006	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/20/2005	1 page	<u>tiff</u>	<u>PDF</u>