

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On January 17, 2017, Glenn R. Spencer filed a formal complaint against Clark Energy Cooperative, Inc., ("Clark Energy"). Mr. Spencer alleged that the electric service to the Big Oak Nursery has been improperly billed under a commercial rate since 2010, and he requested that Clark Energy reclassify the account as either agriculture or residential and that the account be credited for overcharges since 2010. The complaint also states that the nursery closed in 2015, and he now grows hay, pumpkins, and sweet corn. Attached to the complaint are two pages from the New York Department of Agriculture website containing a definition of "nursery operations" and a list of the agricultural commodities included within the definition of "farm operations." Also attached were pictures of the property and of the electric meter on a barn, along with copies of two electric bills in the name of "Glenn R. Spencer" for service rendered to a "barn-nursery." One of the bills, dated May 12, 2010, is for service rendered in April 2010, with the

consumption billed under Rate A. The other bill, dated June 11, 2010, is for service rendered in May 2010, with the consumption billed under Rate C.

By Order dated February 16, 2017, the Commission directed Clark Energy to satisfy the matters complained of or file a written answer to the complaint. Clark Energy filed an answer on February 27, 2017, denying that the classification of Big Oak Nursery as a commercial account is improper, and asserting that this account has been charged a commercial rate since prior to 2010. Clark Energy states that a visual inspection of the property shows a sign reading "Big Oak Nursery: Owners Joe Karrick & Glenn Spencer," along with two phone numbers, and that this is indicative of a business operation.¹ The answer also notes that the Big Oak Nursery has a page on the Kentucky Department of Agriculture website describing "Wholesale Nursery Products and Produce" and listing hours of operation, phone numbers, and directions.² Clark Energy further asserts that Big Oak Nursery is properly classified as a commercial account in that it is a for-profit Kentucky corporation, its principal office is listed as the complainant's address, and the complainant is listed as the corporation's Secretary and registered agent.

On March 8, 2017, the Commission entered an Order providing the complainant 14 days to file a response to Clark Energy's answer and to provide any additional information he may have in support of his complaint. In his March 14, 2017 response, Mr. Spencer acknowledged that he operates a farm that is organized as a corporation and operates on a for-profit basis. However, he asserts that it is unfair for the operation

¹ A picture of the sign was attached to Clark Energy's answer.

² A picture of the Big Oak Nursery page on the Dept. of Agriculture's website was attached to Clark Energy's answer.

of a tobacco farm or barn to be classified as a commercial operation and that such a classification by Clark Energy is a hardship to its members.

Based on a review of the complaint and being otherwise sufficiently advised, the Commission finds that the record is complete and, pursuant to KRS 278.260(2), a hearing is not necessary in the public interest or for the protection of substantial rights. The Commission begins its analysis by noting that KRS chapter 278 grants the Commission “exclusive jurisdiction over the regulation of rates and service of utilities.”³ That chapter also provides that “[e]very utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates.”⁴

Clark Energy has a classification of service titled “Schedule R: Residential,” which is set forth in its tariff sheet No. 43 on file with the Commission. That tariff states that it is “[a]vailable to all residential consumers subject to established rules and regulations of the Distributor.” Clark Energy also has a classification of service titled “Schedule C: General Power Service,” which is set forth in its tariff sheet No. 53 on file with the Commission. That tariff states that it is “[a]vailable to all non-residential general power requirements with Kilowatt (kw) demands less than 50 kw subject to established rules and regulations of the Distributor.” Other than these two tariffs, Clark has no rate schedules available specifically for farm or agricultural purposes.

The facts as set forth in Mr. Spencer’s complaint and in his response acknowledge that his claim of improper billing relates to electric service provided by Clark Energy to a barn that is used for farming and agricultural purposes. Such uses are for non-residential

³ KRS 278.040(2).

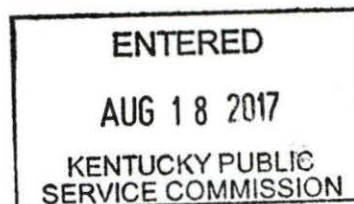
⁴ KRS 278.030(3).

purposes. Under Clark Energy's filed tariffs, service to a metered barn is properly classified and billed under Schedule C: General Power Service, irrespective of whether the barn is used as a nursery or for farming or other agricultural purposes. The bills attached to Mr. Spencer's complaint describe the service as being provided to a "barn-nursery," and show that the service has been billed at commercial rates. As noted in Clark Energy's answer, as a result of a 2010 rate case, the name of the tariff for service to small commercial customers was changed from Schedule A to Schedule C, effective on and after April 16, 2010.⁵ Thus, Mr. Spencer's barn has always been billed under a commercial rate. For all of these reasons, the Commission finds that Mr. Spencer's barn has been properly billed under a commercial rate and his complaint should be dismissed.

IT IS THEREFORE ORDERED that:

1. Mr. Spencer's complaint against Clark Energy regarding billing to a "barn-nursery" under a commercial rate is dismissed.
2. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:



Acting Executive Director

⁵ Case No. 2009-00314, *Application of Clark Energy Cooperative, Inc. for an Adjustment of Rates*, Appendix A, Exhibit D (Ky. PSC Apr. 20, 2010).

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