

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DAVID I. DAWLEY	)	
	)	
COMPLAINANT	)	CASE NO.
	)	2018-00259
V.	)	
	)	
DUKE ENERGY KENTUCKY, INC.	)	
	)	
DEFENDANT	)	

ORDER

This matter arises upon a complaint and amended complaint tendered by David I. Dawley (Mr. Dawley) against Duke Energy Kentucky, Inc. (Duke Kentucky). On July 27, 2018, Mr. Dawley tendered a complaint alleging that Duke Kentucky violated its advanced metering infrastructure (AMI) metering system tariff by failing to install an analog meter and by billing Mr. Dawley for the analog meter that was not installed. By Order entered August 3, 2018, the Commission found that Mr. Dawley’s complaint failed to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and provided him the opportunity to amend his complaint to cure the deficiencies. Mr. Dawley tendered an amended complaint on August 16, 2018. Finding that additional information was needed to determine whether Mr. Dawley’s amended complaint established a *prima facie* case, the Commission issued an Order on September 4, 2018, directing Duke Kentucky to provide information regarding Mr. Dawley’s current meter. Duke Kentucky timely filed its

response. This matter stands submitted for a decision to determine whether Mr. Dawley has presented a *prima facie* case.

### BACKGROUND

In April 2018, after receiving notice from Duke Kentucky regarding the pending installation of an AMI meter, Mr. Dawley contacted Duke Kentucky to exercise his opt-out rights and requested that an analog meter be installed at his residence. Shortly thereafter, Mr. Dawley became aware that his existing meter was an early generation “smart meter” installed in 2007 in conjunction with Duke Kentucky’s pilot program for a power line carrier (PLC) system. A PLC meter transmits information, including usage data, from a customer’s meter to a utility’s central office over electric power transmission lines. Mr. Dawley again contacted Duke Kentucky to request that the existing PLC meter be removed and an analog meter be installed. According to Mr. Dawley, Duke Kentucky has billed him since April 2018 for an analog meter that Duke Kentucky never installed. In support of his allegation, Mr. Dawley provided bills for service rendered in April, May, June, and July 2018, each of which included a \$25.00 fee labelled “Advanced Meter Opt Out Fee.”

### DISCUSSION

#### Legal Standard

The Commission reviews complaints under standards set forth in 807 KAR 5:001, Section 20. Pursuant to 807 KAR 5:001, Section 20(1)(c), a formal complaint must state with reasonable certainty the act that is the subject of the complaint and the law, order, or regulation that was allegedly violated. 807 KAR 5:001, Section 20(4)(a)(1) provides that a complainant be afforded the opportunity to amend a complaint that the Commission

determines does not conform to the requirements set forth in the regulation because it fails to state the law, order, or regulation that was violated or fails to establish a *prima facie* case. If the amended complaint fails to conform to the requirements of 807 KAR 5:001, Section 20, the complaint is dismissed.

#### Alleged Violation

As noted above, Mr. Dawley alleged that Duke Kentucky violated its AMI opt out tariff, Rider Advanced Meter Opt-Out Residential (Rider AMO), by charging a monthly fee without installing an analog meter as Mr. Dawley requested. Duke Kentucky's Rider AMO, states:

Applicable to residential customers served under Rate RS who request an electric meter that does not utilize radio frequency communications to transmit data **provided that such a meter is available for use by the company**. At the Company's option, meters to be read manually **may be either an advanced meter with the radio frequency communication capability disabled or other non-communicating meter**. The meter manufacturer and model chosen to service the customer's premise are at the discretion of the Company and are subject to change at the Company's option, at any time. [Emphasis added]

Pursuant to KRS 278.160, Duke Kentucky must strictly comply with the rates, and terms and conditions of service set forth in its tariffs filed with the Commission. Per the terms of Rider AMO, Duke Kentucky must provide Mr. Dawley with an electric meter that does not utilize radio frequency communications by either disabling the radio frequency module on his existing meter or by providing a non-communicating meter, if one is available.

In its responses to the Commission's September 4, 2018 Order, Duke Kentucky maintained that it complied with Rider AMO because it removed the PLC collector device

from Mr. Dawley's existing meter when he requested to opt out of an AMI meter. Duke Kentucky contended that, because the PLC collector device was removed, Mr. Dawley's existing meter is a non-communicating meter and does not have radio frequency communication capability. Duke Kentucky stated that it could not install an analog meter at Mr. Dawley's residence because Duke Kentucky does not have analog meters in its inventory. Duke Kentucky further explained that analog meters removed from service during the AMI deployment are scrapped because they are beyond their useful service life, and thus not suitable for reinstallation.

#### FINDINGS

Upon review of the evidence of record and being otherwise sufficiently advised, the Commission finds that Mr. Dawley's amended complaint should be dismissed for failure to conform to the requirements of 807 KAR 5:001, Section 20, because he failed to state a claim for which relief could be granted. The evidence in the case record reflects that Duke Kentucky did not violate any statute, regulation, or tariff provision that the Commission is charged with enforcing.

Mr. Dawley's claim rests upon his belief that, under Rider AMO, he was entitled to receive an analog meter upon making his opt-out request and that the monthly opt-out fee was tied to the installation of an analog meter. However, Mr. Dawley's understanding of what Duke Kentucky is required to do under its tariff is inconsistent with the express provisions of the tariff. Rider AMO requires Duke Kentucky to provide customers who opt out of advanced meters with a non-communicating meter. The evidence in the case record demonstrates that Duke Kentucky provided Mr. Dawley with a non-communicating meter once it removed the PLC collector device from Mr. Dawley's meter. While Mr.

Dawley may prefer an analog meter, Duke Kentucky was not required to provide Mr. Dawley with an analog meter, which is unavailable. For the above reasons, the evidence in the case record demonstrates that Duke Kentucky did not violate the terms of Rider AMO by providing Mr. Dawley with a non-communicating meter after Mr. Dawley requested to opt out of an advanced meter. Therefore, Mr. Dawley failed to conform to the requirements for a complaint because he failed state a claim for which relief could be granted.

Similarly, the evidence in the case record also demonstrates that Duke Kentucky did not violate the terms of Rider AMO by charging Mr. Dawley the \$25.00 monthly fee for opting out of installation of an advanced meter. The monthly opt-out fee is not predicated upon the installation of an analog meter at Mr. Dawley's residence, but instead is predicated upon recovery of costs incurred by opt-out customers, such as costs for manual meter reading and billing. As the Commission previously determined, operational costs are incurred when customers opt out of advanced meters, and thus customers who opt out of an advanced meter should bear the operational costs related to that decision.<sup>1</sup> Here, Mr. Dawley failed to establish that Duke Kentucky violated Rider AMO by charging Mr. Dawley the \$25.00 monthly opt out fee, and therefore Mr. Dawley failed to conform to the requirements for a complaint because he failed to state a claim for which relief could be granted

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<sup>1</sup> Case No. 2012-00428, *Consideration of the Implementation of Smart Grid and Smart Meter Technologies* (Ky. PSC Apr. 13, 2016), Final Order at 17. Operational costs include administrative time and labor costs to manage meter reading and billing for opt out customers.

IT IS THEREFORE ORDERED that:

1. The amended complaint filed by Mr. Dawley is dismissed for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c).
2. This case is closed and removed from the Commission's docket.

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By the Commission



ATTEST:



Executive Director

Case No. 2018-00259

David Dawley  
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