COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALFRED SAYLOR COMPLAINANT V. KENTUCKY UTILITIES COMPANY DEFENDANT	)))))))))	CASE NO. 2022-00030

O R D E R

On January 26, 2022, Alfred Saylor filed a complaint against Kentucky Utilities Company (KU) alleging that KU applied an incorrect and unauthorized netting methodology in calculating Mr. Saylor's electric bill under Tariff Net Metering Service 2 (NMS-2). On July 1, 2022, the Commission entered an Order stating that a *prima facie* case had not been made and granted Mr. Saylor the opportunity to file an amended complaint. Mr. Saylor filed an amended complaint on July 11, 2022, reiterating the original argument while also providing some additional information. This matter stands submitted for a decision.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 20, governs the filing of a formal complaint. In accordance with 807 KAR 5:001, Section 20(1)(c), a complaint must state "[f]ully, clearly, and with reasonable certainty, the act or omission" that the complaint alleges the statute, regulation, order, or tariff the utility failed to comply with, and state any facts, with details, of the alleged failure. In accordance with 807 KAR 5:001, Section 20(4)(a), the Commission examines a complaint to determine whether the complaint establishes a *prima facie* case and conforms to the administrative regulation.

A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case or conform to the administrative regulation, 807 KAR 5:001, Section 20(4)(a)(1) provides that the complainant be notified and provided an opportunity to amend the complaint within a specified time. Additionally, 807 KAR 5:001, Section 20(4)(a)(2) provides that if the complaint is not amended within the time that the Commission grants, then the complaint shall be dismissed.

KRS 278.465(4) defines net metering as the difference between: (1) the dollar value of all electricity energy generated by an eligible customer-generator that is fed back to the electric grid; and (2) the dollar value of all electricity consumed by the eligible customer-generator over the same billing period and priced using the applicable tariff.

KRS 278.466(3) requires a retail electric supplier to compensate an eligible customer-generator for all electricity produced by the customer's eligible electric generating facility that is exported to the electric grid at a compensation rate established by the Commission.

KRS 278.466(4) states that, each billing period, compensation provided to an eligible customer-generator must be in the form of a dollar-denominated bill credit. If the bill credit exceeds the amount billed for energy consumption, the amount of the excess is carried forward to the next bill.

AMENDED COMPLAINT

According to the amended complaint, Mr. Saylor takes service from KU under Tariff NMS-2, which was approved by the Commission on September 24, 2021, in Case No. 2020-00349.[1] Mr. Saylor stated that in his initial bill under Tariff NMS-2, as of December 27, 2021, KU netted 544 kilowatt hours (kWh) of energy that Mr. Saylor exported to the grid against 1,013 kWh of energy Mr. Saylor consumed during the same billing period, and then calculated electric charges based upon the remainder, which reflected more kWh consumed than exported.[2] Because the kWh-to-kWh netting resulted in more energy consumed than exported, KU applied the retail rate to the net kWh as the multiplier for calculating the energy charge to reach a dollar value for the usage.[3] On December 28, 2021, KU notified Mr. Saylor by letter that it would adjust the net metering energy billing under the methodology approved by the Commission in Case No. 2020-00349 on September 24, 2021.[4] On December 29, 2021, KU issued a revised bill that netted the dollar value of the 544 kWh exported against the dollar value of 1,013 kWh consumed, along with other electric charges, to derive the total electric charge.[5]

According to Mr. Saylor, the netting methodology applied in the December 29,

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[1] Case No. 2021-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Sept. 24, 2021), Order.

[2] *See* Amended Complaint, Exhibit H.

[3] The Commission notes that, had the energy exported be greater than energy consumed, then the multiplier would have been the export compensation rate.

[4] Amended Complaint, Exhibit I.

[5] Amended Complaint, Exhibit J.

2021 bill is “instantaneous credit” or “instantaneous netting” which the Commission rejected as not fair, just nor reasonable in the September 24, 2021 Order in Case No. 2020-00349.

In the amended complaint, Mr. Saylor expanded upon the argument made in the complaint that KU applied the incorrect netting methodology in the December 29, 2021 bill, arguing that the Commission approved a netting methodology that required KU to net the energy consumed and the energy exported, then apply the applicable rate. According to Mr. Saylor, if more energy is exported than consumed, then KU would apply the NMS-2 rate approved by the Commission. If more energy is consumed than exported, then KU would apply the retail rate approved by the Commission.

DISCUSSION AND FINDINGS

The Commission notes that the term “instantaneous credit” and “instantaneous netting” are not defined in KRS Chapter 278. In the September 24, 2021 Order, the Commission said:

> [T]he Commission finds that LG&E/KU’s proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. This is because LG&E/KU’s proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that “net metering means the difference between” the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer generator over the same billing period.[6]

In the September 24, 2021 Order, the Commission used the term “instantaneous credit” to mirror KU’s use of the concept of “instantaneous netting.” The use of the term

[6] Case No. 2020-00349, *Kentucky Utilities Company*, (Ky. PSC Sept. 24, 2021), Order at 48.

instantaneous credit in the September 24, 2021 Order is consistent with instantaneous netting terminology used in Commission Staff's Eighth Request for Information (Staff's Eighth Request), Item 2(a):

> [C]onfirm whether KU is still proposing an *instantaneous netting* approach for NMS-2 customers. In other words, confirm whether customer-generators will only be able to "self-supply", i.e., use their own production kWh to offset their billed consumption kWh, during the precise intervals when their generators are producing. If KU is not proposing instantaneous netting, explain the proposed netting approach in detail and provide a numerical example.[7] (emphasis added).

KU proposed a methodology termed "instantaneous netting" or "instantaneous crediting" with an hour-by-hour netting, with netting occurring only in the same hour that energy was exported. The methodology proposed by KU involved the applicable netting period rather than netting methodology, specifically whether kWh should be netted against kWh or the dollar value of kWh should be netted against dollar value of kWh. In the September 24, 2021 Order, the Commission expressly rejected the "instantaneous crediting" time frame for which the netting would occur because KRS 278.466(4) requires the time period of netting be the entire billing period. In response to a request for rehearing regarding netting of the "dollar value" of the energy consumed and energy exported, the Commission clarified the process in an Order entered on November 4, 2021:

> Consistent with our findings in Case No. 2020-00174 and KRS 278.465(4). The Commission finds that LG&E/KU should continue to net the **dollar value** of the total energy consumed and the **dollar value** of total energy exported by eligible customer generators **over the billing period** in NMS 2

[7] Case No. 2020-00349, *Kentucky Utilities Company*, Staff's Eighth Request (Ky. PSC Aug. 3, 2021), Item 2(a).

> consistent with the billing period netting period established in NMS 1. (emphasis added).[8]

Based upon a review of the complaint, amended complaint, statutes, and the September 24, 2021 and November 4, 2021 Orders in Case No. 2020-00349, the Commission finds that Mr. Saylor failed to state sufficient allegations to establish a *prima facie* case because the complaint failed to identify any acts or omissions by KU that violate any statute, regulation, order, or tariff enforced by the Commission or Order entered by the Commission. The methodology that Mr. Saylor claimed is the correct net metering methodology is in contravention of KRS 278.465–.466 and of the methodology approved in the September 24, 2021 Order and November 24, 2021 Order in Case No. 2020-00349.

In the complaint and amended complaint, Mr. Saylor argued that the correct methodology nets the kWh energy exported against the kWh energy consumed over the same billing period, and then applies the applicable compensation rate to the remainder. According to Mr. Saylor, if the kWh of energy exported is greater than energy consumed, then the export compensation rate is applied to the remainder; if the kWh of energy consumed is greater than energy exported, then the retail rate is applied to the remainder.

KRS 278.465(4) expressly defines net metering as the difference between the **dollar value** of energy exported and the **dollar value** of energy consumed over the same billing period. Based upon a review of the amended complaint and applicable law, the Commission concludes that Mr. Saylor's misstates the net metering methodology required by law and approved in Case No. 2021-00349. Mr. Saylor's initial bill for service under Tariff NMS-2 applied a methodology not approved by the Commission because it

[8] Case No. 2020-00349, *Kentucky Utilities Company*, (Ky. PSC Nov. 24, 2021), Order at 25.

netted kWh against kWh, instead of netting the dollar value against the dollar value, as required by KRS 278.465(4). However, this was corrected by KU prior to the filing of the complaint. The Commission further concludes that Mr. Saylor's subsequent bill for service under Tariff NMS-2 applied the methodology approved by the Commission because it netted dollar value against dollar value over the billing period, as required by KRS 278.465(4).

For the above reasons, the Commission finds that Mr. Saylor's complaint should be rejected for failing to establish *prima facie* case. The Commission further finds that, in accordance with 807 KAR 5:001, Section 20(4)(a)(1), Mr. Saylor was previously afforded the opportunity to amend the complaint to state a *prima facie* case, and though an amended complaint was tendered, the amended complaint failed to identify any acts or omissions by KU that violate any statute, regulation, order, or tariff enforced by the Commission or Order entered by the Commission. For that reason, the Commission finds that the amended complaint failed to establish a *prima facie* case and therefore the amended complaint should be dismiss.

IT IS THEREFORE ORDERED that:

1. Alfred Saylor's amended complaint is rejected for failing to state a *prima facie* case and is dismissed

2. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

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KENTUCKY PUBLIC SERVICE COMMISSION

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