

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELIZABETH L. EICHELBERGER)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2022-00289
)	
DUKE ENERGY KENTUCKY, INC.)	
)	
DEFENDANT)	

ORDER

On August 22, 2022, Elizabeth Eichelberger filed a complaint against Duke Energy Kentucky, Inc. (Duke Kentucky), alleging that Duke Kentucky miscalculated her annual plan budget billing for gas and electric bills beginning with the January 20, 2022 to February 18, 2022 billing period.¹ The Commission ordered Duke Kentucky to satisfy or answer the complaint,² and Duke Kentucky filed an answer denying the substantive allegations of the complaint.³ Duke Kentucky answered four requests for information from Commission Staff. Neither party requested a hearing.

Duke Kentucky's budget billing programs are governed by its gas and electric tariffs. Each tariff offers an Annual or Quarterly plan. Duke Kentucky acknowledged that

¹ Complaint, Exhibit 2.

² Order (Ky. PSC Nov. 7, 2022).

³ Answer and Motion to Dismiss (filed Nov. 17, 2022).

Ms. Eichelberger participates in the Annual Budget Billing Plan for gas and electric billing.⁴

Duke Kentucky's gas tariff sets out the following Annual Budget Billing Plan procedures:

Budget Billing Plan Description:

Annual Plan:

- The Annual Plan provides 12 months of equal payments by using 12 months of customer's usage, dividing the usage by 12, and using the result to calculate the bill. Month 12 is a settle-up month between the billed amounts and customer bills based on actual usage[.]
- A bill message is sent after 3, 6, and 9 months with a new bill amount if the budget bill amounts compared to the actual bill amounts exceeds a Company set threshold.
- The budget bill amount is also changed as needed after the 12 month review.⁵

Duke Kentucky's electric tariff sets out the following Annual Budget Billing Plan procedures:

Budget Billing Plan Description:

Annual Plan:

- The Annual Plan provides 11 months of equal payments by using 12 months of customer's usage, dividing the usage by 11, and using the result to calculate the bill.
- Month 12 is a settle-up month between the billed amounts and customer bills based on actual usage.
- A bill message is sent after 6 months with a suggested new bill amount if the budget bill amounts compared to the actual bill amounts exceeds a Company set threshold; however, Customer must contact Company to change the amount.
- The budget bill amount is changed as needed after the 12 month review.⁶

⁴ Duke Kentucky's Response to Commission Staff's Third Request for Information (filed July 29, 2023), Item 4(b).

⁵ Ky. P.S.C. Gas No. 2, Seventh Revised Sheet No. 25 (issued Oct. 27, 2023), effective Oct. 13, 2023. This language has been effective since the Fifth version of Sheet No. 25, effective January 4, 2022, prior to the alleged miscalculation.

⁶ Ky. P.S.C. Electric No. 2, Sixth Revised Sheet No. 25 (issued Mar. 18, 2022), effective Apr. 18, 2023. This language has been effective since the Third version of Sheet No. 25, effective April 14, 2018, prior to the alleged miscalculation.

BACKGROUND

The budget billing year Duke Energy utilized for Ms. Eichelberger's gas and electric plan used December as the final plan month and "settle-up" month as referenced in the gas tariff.⁷ Based on the December 2020 settle-up, Duke Kentucky set her total budget billing for gas and electric at \$217.00 per month.⁸ Then, based on the December 2021 settle-up, Duke Kentucky reset her total budget billing for gas and electric at \$333.00 per month.⁹ This was calculated by using the usage for the previous 12 months, calculating each month's bills based on rates in effect at the time of the settle-up, and dividing the result by 11.¹⁰ Ms. Eichelberger filed her complaint upon the resulting bill increase first applied to her January 2022 bill.

Starting in October 2022, Duke Kentucky began making quarterly changes to Ms. Eichelberger's gas and electric budget billing plan.¹¹ Quarterly changes were triggered if the budget bill amounts compared to the actual bill amounts exceeded a threshold set by Duke Kentucky.¹² While the thresholds are not included in the tariffs, Duke Kentucky did provide them in its 2021 gas rate case.¹³ Ms. Eichelberger's September through

⁷ Duke Kentucky's Response to Commission Staff's Fourth Request for Information (Staff's Fourth Request), Item 3, Attachment (filed Nov. 17, 2023).

⁸ Duke Kentucky's Response to Staff's Fourth Request, Item 3, Attachment.

⁹ Answer and Motion to Dismiss at 3, paragraph 11.

¹⁰ Duke Kentucky's Response to Commission Staff's First Request for Information, Item 1, Confidential Attachment 2.

¹¹ Duke Kentucky's Response to Staff's Fourth Request, Item 3, Attachment.

¹² Duke Kentucky's Response to Staff's Third Request, Item 4(d).

¹³ Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs, and 3) All Other Required Approvals, Waivers, and Relief* (filed July 14, 2021), Duke Kentucky's Response to Commission Staff's Second Request for Information, Item 2.

November 2022 bills made no reference to this quarterly change other than the different amount, but the bills did state, “[y]our Annual Budget Billing Plan keeps your monthly charge steady throughout the year, even as your usage goes up or down. At renewal, we may adjust the amount of your monthly charge for the next plan year, based on your usage in this plan year.”¹⁴

In December 2022, Duke Kentucky also changed the way it calculated gas and electric budget billing by averaging Ms. Eichelberger’s past 12 months’ bills, dividing the result by 12, and applying a new pricing factor to come up with the budget bill amount for the year.¹⁵ Quarterly review and this change in rate application has continued through October 2023, the last month for which billing data was provided in this case.¹⁶

Duke Kentucky admitted that it also mistakenly provided incorrect budget billing information on Ms. Eichelberger’s bills due to a system defect for the budget bill months which had been billed in Duke Kentucky’s legacy CIS system.¹⁷ Duke Kentucky indicated that this issue has been resolved.¹⁸

¹⁴ Duke Kentucky’s Response to Commission Staff’s Second Request for Information, Item 1, Attachment at 132–143.

¹⁵ Duke Kentucky’s Supplemental Response to Staff’s Third Request , Item 3, Supplemental Attachment.

¹⁶ Duke Kentucky’s Response to Staff’s Fourth Request, Item 3, Attachment.

¹⁷ Duke Kentucky’s Response to Commission Staff’s Third Request for Information (filed July 28, 2023), Item 3(b).

¹⁸ Duke Kentucky’s Response to Commission Staff’s Third Request for Information (filed July 28, 2023), Item 3(b).

DISCUSSION AND FINDINGS

Gas Annual Budget Billing Plan

The current gas Annual Billing Budget tariff took effect on January 4, 2022, changing two relevant provisions: (1) the calculation was changed from using an 11-month to a 12-month average of customer usage starting with the next settle-up month; and (2) Duke Kentucky could make quarterly adjustments without customer approval,¹⁹ compared to the prior tariff that allowed recalculation after six months upon customer request.²⁰ The gas tariff both before and after the change stated “[t]he budget bill amount is also changed as needed after the 12 month review.”

Although these new tariff provisions took effect before Ms. Eichelberger’s first bill of the new annual budget billing year, the tariff took effect after the December 2021 settle-up. The Commission interprets the new tariff language as not intending to change the terms of the Annual Budget Billing Plan established in December 2021. The new tariff language would instead apply to the next settle-up month, preventing budget billing customers from having unintended bill changes timed depending on when their budget bill year began. Duke Kentucky calculated the annual budget bill first billed for service beginning on January 20, 2022 under the terms of the prior tariff, dividing usage by 11.²¹ However, Duke Kentucky’s recalculation of Ms. Eichelberger’s budget billing for her October 2022 bill was inconsistent with both the Commission’s interpretation and Duke Kentucky’s decision to use the prior tariff’s 11-month average. Under the old tariff

¹⁹ Ky. P.S.C. Gas No. 2, Seventh Revised Sheet No. 25.

²⁰ Ky. P.S.C. Gas No. 2, Fourth Revised Sheet No. 25.

²¹ Answer and Motion to Dismiss, Exhibit A, Tab “Budget Bill Calc – Eichelberger.”

language, changing the bill amount was only permitted upon request of the customer. Therefore, Duke Kentucky violated its tariff by making a change to Ms. Eichelberger's gas budget billing amount in October 2022. Even if Duke Kentucky were to argue that the new tariff should have applied to Ms. Eichelberger's budget billing starting January 20, 2022, under that scenario, Duke Kentucky still would have been in violation of the tariff by using an 11-month usage average instead of the new 12-month average.

Regarding what rate to use in calculating budget billing, Duke Kentucky argued that neither "gas nor electric tariffs specify which rates are applied to usage to calculate the budget bill amount, only that usage will be used."²² However, the tariff is more specific than that—it says the bill is calculated by "using 11 months of customer's usage, dividing the usage by 11, and using the result to calculate the bill."²³ If the bill was meant to be calculated based on the average bill, the tariff language could have said so. Using the average usage to calculate the bill excludes the possibility of using different rates depending on rates in effect in different months. The tariff was intended to use a single rate, which Duke Kentucky did until inexplicably changing the way it calculated the bill in December 2022.²⁴ This change constituted a violation of the plain language of the gas tariff.

Beginning with the December 2022 settle-up, Duke Kentucky was permitted to change the monthly bill amount quarterly, which it did in each quarter of 2023. Duke

²² Duke Kentucky's Response to Staff's Fourth Request, Item 2(b).

²³ Ky. P.S.C. Gas No. 2, Fourth Revised Sheet No. 25. The same language is used in the current tariff, substituting 11 months with 12 months.

²⁴ Duke Kentucky's Supplemental Response to Staff's Third Request, Item 3, Supplemental Attachment.

Kentucky was required to switch to using 12 months of customer usage in its calculations instead of 11 months. Duke Kentucky correctly made this change. Duke Kentucky was required to use average usage, not average bills.

The Commission finds that Duke Kentucky violated its Annual Budget Billing Plan gas tariff provisions in calculating Ms. Eichelberger's budget bill in December 2022 by using different rates instead of average usage multiplied by the rate in effect in December 2022. If Duke Kentucky believes that using rates in effect at the time of usage would result in "a better estimate,"²⁵ then the Commission recommends that Duke Kentucky seek a tariff revision to change the language.²⁶ The Commission also finds that Duke Kentucky violated its Annual Budget Billing Plan gas tariff provisions by beginning quarterly bill changes prior to the December 2022 settle-up. Any quarterly revisions after December 2022 were permissible to the extent they conformed to the thresholds disclosed by Duke Kentucky in Case No. 2021-00190. The Commission notes that based on the filings in the record, none of the settle-ups up to December 2022 incorrectly reconciled Ms. Eichelberger's balance; therefore, she is not owed anything other than whatever positive balance would have been applied in any settle-up occurring after the last billing information in the case record.

The Commission finds that Duke Kentucky should, within 30 days of service of this Order, start a new gas budget billing year for Ms. Eichelberger's account, and file into the record a new settle-up calculation and calculation of a new gas budget billing amount.

²⁵ Duke Kentucky's Response to Staff's Fourth Request, Item 2(b).

²⁶ The Commission also notes that the new tariff language is misleading because it refers to 12 months of equal payments, even though Duke Kentucky can unilaterally change the payments quarterly and even if the payments are not changed quarterly, the bill amount would change in the settle-up month, so the customer can, at most, only receive 11 months of equal payments.

The new billing amount should be calculated by taking the previous 12 months of usage, divided by 12, multiplied by the rate in place at the time of the settle-up. The Commission also finds that Duke Kentucky should remove the language from Ms. Eichelberger's bill quoted above regarding the Annual Budget Billing Plan. Since it states that the plan results in a bill that does not change through the year, this language is inaccurate and misleading, since the gas bill may change quarterly.

Electric Annual Budget Billing plan

The current electric Annual Budget Billing tariff language has been in effect since 2018.²⁷ Duke Kentucky did not change the electric budget billing language when it changed its gas budget billing language. Therefore, an 11-month divisor should still be used, and Duke Kentucky used this divisor in calculating Ms. Eichelberger's electric budget bills. However, Duke Kentucky incorrectly used varying rates to calculate the budget bills as it did with gas bills. The electric budget billing tariff language requires average usage to be used to calculate the bill, not usage times rate at the time of usage, averaged. Duke Kentucky violated its electric tariff by calculating electric budget billing using variable rates.

Duke Kentucky also violated its tariff by making unilateral quarterly changes to Ms. Eichelberger's electric budget billing without her permission. The current electric tariff allows Duke Kentucky to suggest a new bill amount after six months but may not change it unless the customer requests the change.

²⁷ Ky. P.S.C. Electric No. 2, Third Revised Sheet No. 25 (issued Apr. 30, 2018), effective Apr. 14, 2018.

The Commission finds that Duke Kentucky violated its Annual Budget Billing Plan electric tariff provisions in calculating Ms. Eichelberger's budget bill in December 2022 by using different rates instead of average usage multiplied by rate in effect in December 2022. If Duke Kentucky believes that using rates in effect at the time of usage would result in "a better estimate,"²⁸ then the Commission recommends that Duke Kentucky seek a tariff revision to change the language. The Commission also finds that Duke Kentucky violated its Annual Budget Billing Plan electric tariff provisions by beginning quarterly bill changes prior to the December 2022 settle-up. The Commission recommends filing a new electric tariff that mirrors the language of the gas tariff annual budget billing language to minimize customer confusion and maintain consistency.

The Commission finds that Duke Kentucky should, within 30 days of service of this Order, start a new electric budget billing year for Ms. Eichelberger's account, and file into the record a new settle-up calculation and calculation of a new electric budget billing amount. The new billing amount should be calculated by taking the previous 12 months of usage, divided by 11, multiplied by the rate in place at the time of the settle-up.

IT IS THEREFORE ORDERED that:

1. Ms. Eichelberger's complaint against Duke Kentucky is granted.
2. Duke Kentucky shall, within 30 days of service of this Order, start a new gas budget billing year for Ms. Eichelberger's account, and file into the post-case record a new settle-up calculation and calculation of a new gas budget billing amount. The new billing amount should be calculated by taking the previous 12 months of usage, divided by 12, multiplied by the rate in place at the time of the settle-up.

²⁸ Duke Kentucky's Response to Staff's Fourth Request, Item 2(b).

3. Duke Kentucky shall only make quarterly changes to Ms. Eichelberger's gas budget bill if actual bill amounts exceed the thresholds provided by Duke Kentucky in Case No. 2021-00190.

4. Duke Kentucky shall, starting with the first bill after the settle-up, remove the following language from Ms. Eichelberger's bills: "Your Annual Budget Billing Plan keeps you monthly charge steady throughout the year, even as your usage goes up or down. At renewal, we may adjust the amount of your monthly charge for the next plan year, based on your usage in this plan year."

5. Duke Kentucky shall, within 30 days of service of this Order, start a new electric budget billing year for Ms. Eichelberger's account, and file into the post-case record a new settle-up calculation and calculation of a new electric budget billing amount. The new billing amount should be calculated by taking the previous 12 months of usage, divided by 11, multiplied by the rate in place at the time of the settle-up.

6. Duke Kentucky shall not make any changes to the electric budget billing amount except after six months with Ms. Eichelberger's permission or upon the 12-month settle-up.

7. If the Commission accepts a new Duke Kentucky gas or electric tariff with changes to the Annual Budget Billing Plan, the new tariffs will not affect Ms. Eichelberger's budget bill until the following settle-up month.

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

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner



ATTEST:



Executive Director

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