

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF DUKE)	CASE NO.
ENERGY KENTUCKY, INC. TO COMPLY WITH)	2022-00391
KRS 278.466 AND 807 KAR 5:006, SECTION 7)	

ORDER

The Commission, on its own motion, pursuant to KRS 278.040, KRS 278.260(1), and KRS 278.990, initiates this proceeding to investigate the alleged failures of Duke Energy Kentucky, Inc. (Duke Kentucky) to comply with KRS 278.160; KRS 278.466, 807 KAR 5:006, Section 7(3), and 807 KAR 5:006, Section 7(1)(a)(3); and the Commission’s April 27, 2020 Order in Case No. 2019-00271.¹

BACKGROUND

This case arises out Case No. 2021-00324,² in which a Duke Kentucky net metering customer, Joseph J. Oka, filed a complaint alleging that Duke Kentucky impermissibly changed its net metering bills and incorrectly billed and credited his account. The Commission determined that Duke Kentucky violated KRS 278.466 on two occasions when calculating Mr. Oka’s December 2021 and June 2022 bills.³ The

¹ Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of The Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Apr. 27, 2020), Order.

² Case No. 2021-00324, *Joseph J. Oka v. Duke Energy Kentucky, Inc.* (Ky. PSC Jan. 10, 2023), final Order.

³ Case No. 2021-00324, final Order at 6–7.

Commission also found that Duke Kentucky violated 807 KAR 5:006, Section 7(3), and the Commission's April 27, 2020 Order in 2019-00271 by removing a graph showing electric usage history from Mr. Oka's bill beginning in February 2021 contrary to the sample bill provided in Case No. 2019-00271 and incorporated into its tariff.⁴ Additionally, the Commission found that Mr. Oka's bill provided incomplete meter readings for net metering in violation of 807 KAR 5:006, Section 7(1)(a)(3).⁵

Prior to the final Order in Case No. 2021-00324, Duke Kentucky corrected the errors in the net metering on Mr. Oka's bills by crediting him the proper amounts in subsequent bills. Duke Kentucky also changed its net metering bills to include the electric usage history graph and added a net metering calculation that included usage, generation, past carryover credits, and current credits to be carried over.⁶ Thus, while the Commission found that Duke Kentucky had violated KRS 278.466(3)–(4), 807 KAR 5:006, Section 7(3), and 807 KAR 5:006, Section 7(1)(a)(3); and the Commission's April 27, 2020 Order in Case No. 2019-00271, the Commission found that those violations had been satisfied with respect to Mr. Oka's bills.

Mr. Oka also asked for relief for other customers, but the Commission found that he was not permitted to advocate on behalf of other customers as a non-attorney.⁷ However, the Commission noted that would not prevent the Commission from opening a

⁴ Case No. 2021-00324, final Order at 6.

⁵ Case No. 2021-00324, final Order at 6.

⁶ Case No. 2021-00324, final Order at 6.

⁷ Case No. 2021-00324, final Order at 8.

separate investigation independent of Mr. Oka's complaint to investigate whether other net metering customers failed to receive proper credit for feeding power into the grid.⁸

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.⁹ KRS 278.260 provides that the Commission, on its own motion or after receiving a complaint, may investigate whether "any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable." KRS 278.990(1) allows the Commission to assess a civil penalty of up to \$2,500 for each offense against any utility that willfully violates the provisions of KRS Chapter 278, Commission regulations, or any order of the Commission from which all rights of appeal have been exhausted.

Under KRS 278.466(3), a retail electric supplier is required to compensate net metering generator-customers. Legacy net metering customers are entitled to compensation in the form of a 1:1 kilowatt-hour denominated energy credit provided for electricity fed into the grid.¹⁰ Any energy credit exceeding the amount of the customer's bill shall carry forward to the next bill.¹¹ Under KRS 278.466(2), "[i]f additional meters are installed, the net metering calculation shall yield the same result as when a single meter is used." Further, KRS 278.160(2) prohibits a utility from charging "greater or less

⁸ Case No. 2021-00324, final Order at 8.

⁹ See KRS 278.040(1), (2).

¹⁰ KRS 278.466(6). Mr. Oka is a legacy net metering customer because Duke Kentucky has not filed an application to adjust net metering rates pursuant to KRS 278.466(3) and (6).

¹¹ KRS 278.466(4).

compensation for any service rendered or to be rendered than that prescribed in its filed schedules.”

Duke Kentucky’s bill format is governed by 807 KAR 5:006, Section 7, and a sample bill format was approved by the Commission in Case No. 2019-00271.¹² The sample bill was incorporated as Appendix A into Duke Kentucky’s tariff as required by 807 KAR 5:006, Section 7(3). The sample bill format did not include a net metering sample bill. Under 807 KAR 5:006, Section 7(1)(a)(3), the present and last meter readings must be included on bills.

DISCUSSION

Although Duke Kentucky subsequently corrected the errors on Mr. Oka’s bills, the Commission finds that an investigation is necessary to determine whether Duke Kentucky made similar errors on other net metering customers’ bills, particularly uncorrected errors. Furthermore, the Commission finds that Duke Kentucky should be required to show cause why it should not be sanctioned pursuant to KRS 278.990 for changing its bills in contradiction to the Commission’s Order in Case No. 2019-00271 and in violation of 807 KAR 5:006, Section 7(3), and 807 KAR 5:006, Section 7(1)(a)(3). The Commission further finds that a procedural schedule should be established to ensure the orderly processing of this case.

¹² Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of The Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Apr. 27, 2020), Order at 54.

IT IS THEREFORE ORDERED that:

1. This case is opened to investigate the alleged failure to Duke Kentucky to comply with KRS 278.160, KRS 278.466, 807 KAR 5:006, Section 7(3), 807 KAR 5:006, Section 7(1)(a)(3), and the Commission's Order in Case No. 2019-00271.

2. Within 20 days of the date of service of this Order, Duke Kentucky shall submit to the Commission a written response to this Order explaining the extent to which net metering customers were not properly credited from January 2021 to present, the cause of the issues with net metering credits during that period, whether and how the issues with net metering credits have been corrected, the efforts it has taken to ensure that all net metering customers were and are properly credited, and explaining why Duke Kentucky should not be assessed a penalty pursuant to KRS 278.990 for improperly crediting net metering customers or due to changes it made to the form of its bills for net metering customers in or about February 2021.

3. The procedural schedule set forth in Appendix A to this Order shall be followed.

4. All documents, records, and orders included in the record of Case No. 2021-00324 are incorporated by reference into the record of this proceeding.

5. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001E, Section 8. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the

Commission's July 22, 2021 Order in Case No. 2020-00085¹³ regarding filings with the Commission.

6. As set forth in 807 KAR 5:001E, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding that is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene filed after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

7. Duke Kentucky shall give notice of any scheduled hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). In addition, the notice of hearing shall include the following statement: "This hearing will be streamed live and may

¹³ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

be viewed on the PSC website, psc.ky.gov"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, psc.ky.gov." At the time publication is requested, Duke Kentucky shall forward a duplicate of the notice and request to the Commission.

8. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

9. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

10. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

11. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

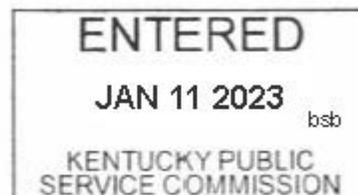
12. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00391 DATED JAN 11 2023

Last day for intervention requests to be accepted.....	01/17/2023
All initial requests for information to Duke Kentucky shall be filed no later than	02/13/2023
Duke Kentucky shall file responses to initial requests for information no later than.....	02/27/2023
All supplemental requests for information to Duke Kentucky shall be filed no later than	03/13/2023
Duke Kentucky shall file responses to supplemental requests for information no later than	03/27/2023
Intervenor testimony, if any, in verified prepared form shall be filed no later than.....	04/10/2023
All requests for information to Intervenors shall be filed no later than	04/24/2023
Intervenors shall file responses to requests for information no later than.....	05/08/2023
Duke Kentucky shall file, in verified form, its rebuttal testimony no later than	05/22/2023
Last day for Parties to request a Public Hearing or submit a request for the matter be decided based upon the written record	05/30/2023

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