

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF CLARK)	CASE NO.
ENERGY COOPERATIVE, INC. TO COMPLY)	2023-00005
WITH KRS 278.160(2))	

ORDER

This case was opened on February 16, 2023, to investigate whether Clark Energy Cooperative, Inc. (Clark Energy) failed to comply with KRS 278.160(2) in any instances similar to the facts in Case No. 2022-00298,¹ in which Clark Energy applied a delinquent balance from one customer’s account to the account of another customer at a different service address. The case was also opened to determine whether civil penalties should be assessed to Clark Energy.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.² 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

¹ Case No. 2022-00298, *Katrina Marie Trusty v. Clark Energy Cooperative, Inc.* (Ky. PSC Jan. 20, 2023), Order.

² See KRS 278.040(1)-(2).

regulations, or any Order of the Commission from which all rights of appeal have been exhausted.

Under KRS 278.160(2) a “utility shall not charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules.”

BACKGROUND

This case arises out of Case No. 2022-00298, in which Clark Energy was found to have violated KRS 278.160(2),³ which states that a “utility shall not charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules.” In that case, the undisputed record showed as follows. Geneva Trusty’s service was disconnected by Clark Energy for nonpayment. Her daughter, Katrina Trusty, applied for new service at a different service address from Geneva Trusty, which was approved by Clark Energy. Clark Energy subsequently transferred Geneva Trusty’s outstanding balance to Katrina Trusty’s account, on the basis that Geneva Trusty was living with Katrina Trusty and a Low-Income Home Energy Assistance Program (LIHEAP) voucher issued to Geneva Trusty was submitted to Clark Energy for Katrina Trusty’s account. The Commission found that Clark Energy’s actions were not permitted by any tariff or provision of law⁴ and that Clark Energy violated KRS 278.160(2) by attempting to collect from Katrina Trusty greater compensation than what was filed in Clark Energy’s applicable tariff.

³ Case No. 2022-00298, Jan. 20, 2023 Order at 2.

⁴ Under 807 KAR 5:041, Section 9(2), a utility is required to “regard each point of delivery as an independent customer and meter the power delivered at each point.” Termination or refusal of service is permitted only for reasons set out in 807 KAR 5:006, Section 15(1), none of which applied to Case No. 2022-00298.

The Commission ordered⁵ that Clark Energy be prohibited from collecting from Katrina Trusty any sums assessed from Geneva Trusty's account, that Clark Energy remove any such charges,⁶ and barred Clark Energy from terminating Katrina Trusty's service for nonpayment of Geneva Trusty's balance.

In the present case, the Commission ordered Clark Energy to file a response to the opening Order and Commission Staff issued one set of data requests. In response to those requests, Clark Energy provided a list of all instances in which balances were transferred from one account to another in the previous five years. The list included whether the account was transferred to a different individual and a different address, the amount of the balance transferred, whether the balance had been paid, and in most instances, the reason for the transfer.

Excluding Katrina Trusty, the list showed that in the prior five years, Clark Energy had transferred balances from one customer's account to another customer's account at a different service address 44 times.⁷ On May 19, 2023, Clark Energy filed a motion to submit for a decision on the record.

DISCUSSION AND FINDINGS

Under 807 KAR 5:006, Section 15(1)(d), a utility may to refuse new service to someone who is indebted to the utility. Under 807 KAR 5:006, Section 15(1)(f) a utility may terminate service at one point of service for nonpayment for service at the same point of service. Read together, these regulations allow a utility to require payment on a

⁵ Case No. 2022-00298, Jan. 20, 2023 Order at 5.

⁶ No refund was ordered because Katrina Trusty had not paid the balance from Geneva Trusty's account.

⁷ See Appendix 1.

delinquent balance by a customer before taking service at another service address or require payment for service at a service address regardless of who is occupying the service address. However, the regulations do not permit a utility to require payment of a delinquent balance by a different customer at a different service address, even if the delinquent customer lives at the different service address or receives assistance for that service address.

Having reviewed the record and being advised, the Commission finds as follows:

1. That Clark Energy violated KRS 278.160(2) 45 times during the five-year period⁸ preceding the opening of this investigation.
2. That Clark Energy should be required to refund or credit⁹ accounts as indicated in Appendix 1 to this Order.
3. That Clark Energy is prohibited from transferring delinquent balances to different customers at different service addresses.
4. That Clark Energy is prohibited from terminating service for failure of a nondelinquent party to pay a delinquent party's balance at a different service address.
5. That Clark Energy and its CEO be required to show cause why Clark Energy should not be assessed civil penalties for willful actions.

IT IS THEREFORE ORDERED that:

1. Clark Energy is prohibited from transferring delinquent balances to different customers at different service addresses.

⁸ KRS 413.120(2) states that "an action upon a liability created by statute has a 5 year statute of limitations when no other time is fixed by the statute creating the liability." Therefore, this investigation is limited to that period.

⁹ Refunds shall be issued to customers who paid the delinquent balances. Credits shall be issued to customers who did not pay the delinquent balances.

2. Clark Energy is prohibited from terminating service for failure of a nondelinquent party to pay a delinquent party's balance at a different service address.

3. Clark Energy shall, within 30 days of issuance of this Order, refund or credit accounts as indicated in Appendix 1 to this Order in the amounts shown.

4. Clark Energy shall, within 30 days of issuance of this Order, provide written notice by first class mail to the individuals listed in Appendix 1 to this Order, that they are being refunded or credited due to Clark Energy's violation of KRS 278.160(2) in Case No. 2023-00005, including a URL to the case on the Public Service Commission's website.

5. Clark Energy and its CEO shall, within 30 days of issuance of this Order, show cause why Clark Energy should not be assessed civil penalties for willful actions.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
AUG 02 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00005 DATED AUG 02 2023

Date	Account#	Payee	Amount	Refund/credit
4/27/2022	1340317		\$ 227.22	Refund
6/2/2020	90710		\$ 190.91	Refund
8/1/2022	3714609		\$ 226.58	Refund
5/11/2022	2203035		\$ 309.63	Refund
1/24/2020	842522		\$ 846.90	Credit
6/13/2022	2909003		\$ 304.42	Refund
1/29/2020	1679632		\$ 72.05	Refund
1/30/2020	2224814		\$ 186.24	Refund
1/30/2020	1252019		\$ 242.72	Refund
9/28/2020	717211		\$ 840.45	Refund
9/21/2020	2041723		\$ 482.37	Refund
3/23/2018	3165812		\$ 491.59	Refund
4/13/2021	1292311		\$ 62.25	Refund
12/2/2020	3846200		\$ 483.36	Refund
1/29/2021	3799200		\$ 251.99	Refund
12/13/2018	750919		\$ 272.17	Refund
5/1/2018	3635500		\$ 474.67	Refund
11/7/2019	2097422		\$ 136.64	Refund
9/17/2020	2047113		\$ 387.34	Refund
5/22/2019	2018449		\$ 76.90	Refund
12/16/2019	3448401		\$ 117.94	Refund
12/12/2019	1735815		\$ 389.56	Credit
1/14/2022	355611		\$ 780.92	Credit
1/16/2019	862716		\$ 167.95	Credit
5/29/2019	1736910		\$ 50.00	Refund
3/19/2019	2023037		\$ 136.34	Refund
8/4/2020	1843814		\$ 4.20	Refund
11/18/2020	2012326		\$ 125.88	Credit
11/12/2020	2203452		\$ 1,356.23	Credit
1/22/2019	2170713		\$ 374.26	Refund
1/22/2019	1896713		\$ 322.58	Refund
2/21/2019	2171412		\$ 287.10	Refund
11/8/2019	1734711		\$ 17.46	Refund
11/15/2019	1323416		\$ 149.99	Refund
11/20/2019	2103726		\$ 361.72	Credit
12/14/2018	3180510		\$ 159.39	Refund
12/14/2018	2209014		\$ 145.71	Credit
12/19/2018	2151713		\$ 435.60	Refund
10/20/2020	3734203		\$ 103.03	Refund
11/15/2018	1692311		\$ 593.06	Refund
1/13/2022	876321		\$ 42.09	Refund
12/15/2020	4125100		\$ 520.75	Refund
1/16/2019	862716		\$ 118.23	Credit
11/7/2019	2097422		\$ 25.00	Refund

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