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June 7, 2017

PSC STAFF OPINION 2017-010

Joel Dufour, President
Earth Tools, Inc.
1525 Kays Branch Rd.
Owenton, KY 40359

Re: Earth Tools, Inc.'s Request for a Staff Opinion on Owen Electric's Net Metering
Tariff

Dear Mr. Dufour:

The Commission received your electronic mail message on May 6, 2017, in which you requested the Commission to determine whether Owen Electric Cooperative, Inc. ("Owen Electric") was properly applying the net metering statute to its billing processes. This opinion represents Commission Staff's ("Staff") interpretation of the law as applied to the facts presented, is advisory in nature, and it is not binding on the Commission should the issues addressed herein be formally presented for Commission resolution.

Based upon your letter, the Staff understands the facts are as follows:

- Owen Electric is a jurisdictional utility pursuant to KRS Chapter 279 that serves 59,655 customers in the Commonwealth of Kentucky.¹
- Earth Tools, Inc. ("Earth Tools") has been a customer of Owen Electric for approximately 15 years.
- Earth Tools installed the first solar photovoltaic system ("solar system") at its facilities in 2011, and entered into a net metering arrangement with Owen Electric. In 2016, Earth Tools installed a second solar system, which is also net metered, and has a combined capacity of 23.7 kilowatts of solar capacity connected to the first electric meter ("First Meter").

¹ Annual Report of Owen Electric to the Public Service Commission for the Year Ended December 31, 2015, at 44 of 58.

- In 2010, Earth Tools added a new building to its property and connected it to a separate electric meter (“Second Meter”) which is also served by Owen Electric. The new building serves as a warehouse and fabrication shop, and uses approximately 20 percent as much energy as does the facility on the First Meter. The Second Meter is not attached to a solar system and does not utilize net metering.
- In 2016, Earth Tools’ solar generation exceeded its electric use on the First Meter by 5,300 kilowatt hours (“kWh”), while its new building, connected to the Second Meter, consumed approximately 4,273 kWh.
- In April 2016, Earth Tools sent a letter to Owen Electric requesting that the net metering policy be amended in order to allow customers to transfer kWh credits between meters located on the same premises. As a basis for the request, Earth Tools argues that although KRS 278.466(5)(e) states that excess electricity credits are not transferable between customers or locations, since Earth Tools’ two buildings are separated by only 100 feet, and have the same mailing address, it should not be considered as two separate customers or locations.
- On April 21, 2017, Earth Tools received a response from Owen Electric denying its request. Owen Electric’s response asserted that its tariff language was purposely designed to be consistent with KRS 278.466, and other applicable law. Owen Electric further stated that if it granted Earth Tools’ request, and amended the net metering tariff language to permit the transfer of excess electricity credits between meters at different locations, then it would place the tariff in disagreement with KRS 278.466(5)(e).
- Earth Tools acknowledges that Kentucky’s net metering statute, KRS 278.466(5)(e), prohibits the transfer of excess electricity credits between customers or locations, but asserts that KRS 278.466(5)(e) is not applicable here since both its First Meter and Second Meter belong to the same customer and are located at the same mailing address.
- Earth Tools further asserts that KRS 278.466(5) does not prevent the sharing of excess electricity credits between accounts, and that Owen Electric should allow Earth Tools to transfer the excess kWh credits that have accumulated on the First Meter account to the Second Meter account.

Your letter presents the following question: Whether Owen Electric’s net metering tariff is in compliance with KRS 278.466 and other applicable state law and regulations regarding net metering.

Staff Analysis

Kentucky's net metering statute, KRS 278.466(5), provides as follows:

The following rules shall apply to the billing of net electricity:

- (a) The net electricity produced or consumed during a billing period shall be read, recorded, and measured in accordance with metering practices prescribed by the commission;
- (b) If the electricity supplied by the retail electric supplier exceeds the electricity generated and fed back to the supplier during the billing period, the customer-generator shall be billed for the net electricity supplied in accordance with subsections (3) and (4) of this section;
- (c) If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the excess kilowatt hours in accordance with subsections (3) and (4) of this section. This electricity credit shall appear on the customer-generator's next bill. Credits shall carry forward for the life of the customer-generator's account;
- (d) If a customer-generator closes his account, no cash refund for residual generation-related credits shall be paid; and
- (e) Excess electricity credits are not transferable between customers or locations.

The Commission's electric regulation on metering practices, 807 KAR 5:041 Section 9(2), provides in relevant part as follows:

The utility shall regard each point of delivery as an independent customer and meter the power delivered at each point. Combined meter readings shall not be taken at separate points, nor shall energy used by more than one (1) residence or place of business on one (1) meter be measured to obtain a lower rate.

Owen Electric's net metering tariff provides in relevant part as follows:

For charges collected on the basis of metered registration, Owen Electric Cooperative shall, for each monthly billing period, determine the net meter registration of the member-

generator by comparing the directional energy flow in each direction. If the net meter registration shows that the deliveries of energy in kWh from the member-generator to Owen Electric Cooperative exceed the deliveries of energy in kWh from Owen Electric Cooperative to the member-generator, the net meter registration in kWh will be carried forward to the next monthly billing period as a Net Metering Credit, expressed in kWh. If the member-generators carried over a Net Metering Credit from one of more prior months, the net meter registration from the current month shall be added to the Net Metering Credit that exists from prior months.

If the net metering registration shows that deliveries of energy in kWh from the Cooperative to the member-generator exceed the deliveries of energy in kWh from the member-generator to the Cooperative, the member-generator shall pay the Cooperative for the net amount of energy delivered by the Cooperative after application of any Net Metering Credit carried forward from previous months at the current rate applicable to its type or class of electric service.

The member shall be responsible for payment of any applicable member charge or other applicable charges.

At no time shall Owen Electric Cooperative be required to convert the Net Billing Credit to cash. If a member-generator closes his account, no cash refund for residual Net Metering Credits shall be paid.

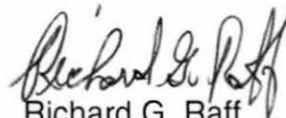
Net Metering Credits are not transferable between members or locations.

Staff's analysis is that KRS 278.466(5)(a) requires the net electricity produced or consumed during a billing period to be read, recorded, and measured in accordance with metering practices prescribed by the Commission. As the Commission prescribed in 807 KAR 5:041 Section 9(2), a utility shall regard each point of delivery as an independent customer and meter the power delivered at each point. Thus, since Earth Tools has two separate points of delivery with two separate meters, i.e., one meter on each of its two separate buildings, then each point of delivery is required to be considered an independent customer. Hence, for billing purposes by Owen Electric, Earth Tools is properly considered as two separate customers even though its two buildings are on the same property and have the same mailing address. Further, 807

KAR 5:041 Section 9(2) prohibits a utility from combining meter readings taken at separate points of delivery. Consequently, KRS 278.466(5)(e) is applicable, and it prevents the excess electricity credits from transferring between Earth Tools' First Meter and Second Meter since each meter is considered an independent customer. Therefore, in Staff's analysis Owen Electric's net metering tariff is in compliance with KRS 278.466 and the applicable state law and regulations.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Angela Goad at (502) 782-2562.

Sincerely,


Richard G. Raff
General Counsel

AMG/ph