

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

MOTION FOR DETERMINATION

Comes now the Complainant, Alfred Saylor (“Saylor”), by and through counsel, and respectfully request this Commission enter an Order in the instant proceeding that directs the Defendant, Kentucky Utilities Company (“KU”) to satisfy the matters complained of or file a written answer to the complaint. In support of this *Motion*, Complainant states the following:

Pursuant to 807 KAR 5:001, Section 20, Complainant, through counsel, filed a Formal Complaint with this Commission on January 26, 2022. On that date, the Commission entered into the record a letter acknowledging the receipt of the filing and assigning the matter Case No. 2022-00030. The Commission has yet to take any further formal action on the instant matter.

In support of this *Motion*, Saylor incorporates by reference his January 26, 2022, Complaint. In lieu of a restatement of the entirety of that pleading, Complainant provides the following summary. Saylor is a KU customer participating in net metering service under KU’s

NMS-2 rider. KU proposed its NMS-2 rider as part of its application in Case No. 2020-00349.¹ KU's proposed methodology for the NMS-2 netting period was and remains properly characterized as an instantaneous credit or instantaneous netting approach.²

In its September 24, 2021, Order in Case No. 2020-00349, the Commission made the following findings concerning KU's proposed netting period:

Based upon the evidence of record, the 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.

Consistent with our finding in Case No. 2020-00174³ and KRS 278.465(4), the Commission finds that LG&E/KU should continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period establishes in NMS 1. The Commission further finds that, because the energy charge is based upon electricity consumed, the energy charge and any riders that are based on a per kWh charge should be netted against energy exported pursuant to KRS 278.465(4).⁴

¹ 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 ("Case No. 2020-00349") (Application accepted as filed on Nov. 25, 2020).

² KU and its corporate sibling Louisville Gas and Electric Company ("LG&E") each filed applications for rate adjustments on the same date. Because both applications submitted, in pertinent part, requested substantially similar treatment for matters in controversy, the Orders applicable to KU also discuss LG&E.

³ Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Accounting Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief ("Case No. 2020-00174") (Application deemed filed Jul. 15, 2020).

⁴ Case No. 2020-00349, Order (KY P.S.C. Sept. 24, 2021), at page 48, Exhibit "C" to the Formal Complaint.

Through its Order entered on September 24, 2021, the Commission denied the rates and charges proposed by KU for its Tariff NMS-2 KU and further ordered that KU's Tariff NMS-2 be modified as described in the September 24, 2021, Order.⁵

KU contested the Commission's September 24, 2021, Order arguing, among other things and at pertinent part, that the Commission's netting approach for NMS-2 was contrary to law.⁶ Through an Order entered on November 4, 2021, the Commission, among other things and at pertinent part, granted rehearing on the description of the netting methodology on page 48 of the Commission's September 24, 2021, Order.⁷ With regard to the netting methodology for NMS-2, on November 4, 2021, the Commission ordered:

The first sentence in the second paragraph on page 48 of the September 24, 2021 Order is stricken and replaced with the following: Consistent with our finding 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 the total energy exported by eligible customer generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1.⁸

The Commission did not, through its November 4, 2021, Order on rehearing modify, withdraw, or otherwise change its September 24, 2021, finding that KU's proposed methodology for the NMS-2 netting period "is not fair, just and reasonable and should be rejected." Further, the Commission did not modify, withdraw, or otherwise change its September 24, 2021, finding:

This [rejection] 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

⁵ *Id.*, at page 62.

⁶ Case No. 2020-00349, Joint Petition Of Kentucky Utilities Company And Louisville Gas And Electric Company For Reconsideration Of The September 24, 2021 Order (filed Oct. 15, 2021), pages 12 to 15.

⁷ Case No. 2020-00349, Order (KY P.S.C. Nov. 4, 2021), page 25.

⁸ *Id.*

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.

KU and LG&E⁹ filed an original action in the Franklin Circuit Court seeking judicial review of the Commission’s September 24, 2021, and November 4, 2021, Orders in Case No. 2020-00349 and Case No. 2020-00350.¹⁰ In the KU and LG&E Complaint in the Franklin Circuit Court, among other things and at pertinent part, KU notes that the Commission rejected the Companies’ proposed dollar-value netting approach.¹¹ The Companies assert that the Commission instead requires, through the pertinent Orders, a two-step netting approach.¹² KU’s and LG&E’s Franklin Circuit Court pleading correctly conveys that the Commission rejected instantaneous credit or instantaneous netting for all energy exported on to the grid for NMS-2.

Saylor is a KU customer falling within the scope of availability for net metering service under KU’s Tariff-NMS-2. In the aftermath of the Kentucky Public Service Commission’s rejection of KU’s proposed instantaneous credit billing methodology in Case No. 2020-00349, KU correctly calculated Saylor’s bill in an initial bill for current charges as of December 27, 2021. Specifically, KU netted Saylor’s kWh generation put on the grid for the period (544 kWh) against his kWh usage imported from KU for the period (1,013 kWh) to determine total usage for the

⁹ This Formal Complaint is based upon KU’s rates and service. To that end, while LG&E is identified, matters concerning LG&E’s rates and service are not directly addressed by Complainant.

¹⁰ *Kentucky Utilities Company and Louisville Gas and Electric Company v. Public Service Commission of Kentucky, et al.*, Civil Action No. 21-CI-00872, Division II (Complaint filed Nov. 24, 2021).

¹¹ *Id.*, at page 13, Numbered Paragraph 47.

¹² *Id.*

period (469 kWh).¹³ KU, thereafter, calculated Saylor's current electric charges based upon total usage for the period of 469 kWh.

By a letter to Saylor dated December 28, 2021, KU, in summary, stated that it would adjust Saylor's net metering energy bill credits based upon the Commission's September 24, 2021, Order in Case No. 2020-00349.¹⁴ Through a subsequent bill for current charges as of December 29, 2021, KU based Saylor's current electric charges on his usage imported from KU for the period (1,013 kWh) without netting Saylor's generation (544 kWh) put on the grid against that imported usage.¹⁵ Saylor's subsequent bill implements the instantaneous credit or instantaneous netting approach for KU's Tariff NMS-2 expressly rejected by the Commission through its Orders in Case No. 2020-00349. There is no Order of the Commission revoking or modifying the Commission's rejection of KU's proposed instantaneous credit or instantaneous netting approach for KU's Tariff NMS-2 authorizing. There is no order or decree of a court of competent jurisdiction suspending or vacating in whole or in part the Commission's Orders in Case No. 2020-00349.

KU issued Tariff NMS-2 on November 9, 2021.¹⁶ KU's Tariff NMS-2 (issued November 9, 2021) purports to implement the instantaneous credit or instantaneous netting approach expressly rejected by the Orders in Case No. 2020-00349. There is no Order of the Commission approving KU's Tariff NMS-2 instantaneous credit or instantaneous netting approach set forth in Tariff NMS-2 (issued November 9, 2021).

¹³ Saylor initial bill, Exhibit "D" attached to the Formal Complaint.

¹⁴ KU December 28, 2021, letter to Saylor, Exhibit "E" attached to the Formal Complaint.

¹⁵ Saylor's subsequent bill, Exhibit "F" attached to the Formal Complaint.

¹⁶ *Kentucky Utilities Company, Rates, Terms, and Conditions for Furnishing Electric Service*, P.S.C. KY. No. 20, First Revision of Original Sheet No. 58, effective Sept. 24, 2021, Exhibit "G" attached to the Formal Complaint.

Saylor is adversely impacted by KU's Tariff NMS-2 (issued November 9, 2021) and KU's instantaneous credit or instantaneous netting approach because KU the billing methodology was expressly rejected by the Commission in Case No. 2020-00349 and is not supported by a Commission Order. KU's Tariff NMS-2 contains an unauthorized billing practice.

The Commission, in furtherance of its statutorily assigned exercise of authority over the rates and service of public utilities, has promulgated 807 KAR 5:001, Section 20 which establishes the procedure for the submission of a Formal Complaint such as the Complaint submitted by Saylor in the instant case. 807 KAR 5:001, Section 20(4)(a) (procedure on filing of complaint) states:

Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a *prima facie* case and conforms to this administrative regulation.

Saylor's Formal Complaint in the instant matter was tendered to the Commission more than five (5) month ago, on January 26, 2022. Although KRS 278.190 does not govern the Commission's review of Saylor's Complaint, it is noteworthy to point out for purposes of comparison that, pursuant to KRS 278.190(2), this matter has been pending without action for a period in excess of five (5) months, the suspension period applicable to the investigation of a rate application supported by a historical test period. The lack of action is demonstrably outside of the time frame ("immediately") established through 807 KAR 5:001, Section 20(4)(a).

Saylor is well-aware that the Commission's threshold determination through 807 KAR 5:001, Section 20(4)(a) includes consideration of whether a complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if not contradicted by other evidence, would entitle the complainant to the requested relief.¹⁷

¹⁷ Case No. 2010-00404, *Bulldog's Enterprises, Inc. d/b/a Bulldog's Road House v. Duke Energy Kentucky, Inc.* (Ky. PSC Nov 15, 2010).

Saylor is a KU customer currently taking service pursuant to KU's Tariff NMS-2. He is currently adversely impacted by the implementation of a billing practice expressly rejected by the Commission in Case No. 2020-00349 and without foundation in any subsequent Order. Saylor will continue to be adversely impacted until the unauthorized billing practice in KU's Tariff NMS-2 is voided. Saylor has standing to assert these claims, the claims are ripe for review, and Saylor has stated sufficient allegations that would entitle him to the requested relief. Prohibiting and remedying unfair, unjust, and unreasonable practices, such as the unauthorized billing methodology in KU Tariff NMS-2 is squarely within the Commission's jurisdiction over Defendant KU's rates and service and properly pursuable through 807 KAR 5:001 Section 20.

For the reasons previously identified in the Formal Complaint filed on January 26, 2022, and reiterated in this *Motion*, Saylor asserts that he establishes a *prima facie* case and, therefore, moves for an order that requires KU to satisfy the matters complained of or file a written answer to the complaint.

WHEREFORE, the Complainant respectfully requests this Commission take the action required under 807 KAR 5:001 Section 20.

Respectfully submitted,



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Notice And Certification for Filing

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 1st day of July, 2022. Pursuant to the Commission's Order in Case No. 2020-00085, *Electronic Emergency Docket Related to Novel Coronavirus Covid-19*, the paper, in paper medium, is not required to be filed.

/s/ David E. Spenard

Notice Concerning Service

The Commission has not yet excused any party from electronic filing procedures for this case. (Counsel further notes that the electronic version of the paper has been transmitted to Honorable Allyson K Sturgeon Managing Senior Counsel - Regulatory & LG&E and KU Energy LLC – through electronic mail message to: asturgeon@pplweb.com.)

/s/ David E. Spenard