

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

AMENDED FORMAL COMPLAINT

Comes now the Complainant, Alfred Saylor (“Saylor”), by and through counsel, pursuant to 807 KAR 5:001 Section 20, and this Commission’s July 1, 2021 Order in the instant case, to submit his Amended Formal Complaint against Kentucky Utilities Company (“KU”). Saylor states as follows.¹

PARTIES

1. Complainant’s name is Alfred Saylor, and he lives in Lexington, Kentucky. Saylor is a KU customer. His mailing address is 828 Hildean Dr, Lexington, Kentucky 40502-2928. Saylor is participating in net metering service under KU’s NMS-2 rider.

¹ For the convenience of the Commission, the majority of amendments appear in **bold type**.

2. Defendant's full name and mailing address are, per its most recent rate case application²:
Kentucky Utilities Company, One Quality Street, Lexington, Kentucky 40507. Per Defendant's most recent annual report available through the Kentucky Public Service Commission, Defendant KU also uses as a mailing address: P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40202.
3. Defendant KU is a public utility engaged in the electric business. KU generates and purchases electricity, and distributes and sells electricity at retail in the following counties in Central, Northern, Southeastern, and Western Kentucky: Adair, Edmonson, Jessamine, Ohio, Anderson, Estill, Knox, Oldham, Ballard, Fayette, Larue, Owen, Barren, Fleming, Laurel, Pendleton, Bath, Franklin, Lee, Pulaski, Bell, Fulton, Lincoln, Robertson, Bourbon, Gallatin, Livingston, Rockcastle, Boyle, Garrard, Lyon, Rowan, Bracken, Grant, Madison, Russell, Bullitt, Grayson, Marion, Scott, Caldwell, Green, Mason, Shelby, Campbell, Hardin, McCracken, Spencer, Carlisle, Harlan, McCreary, Taylor, Carroll, Harrison, McLean, Trimble, Casey, Hart, Mercer, Union, Christian, Henderson, Montgomery, Washington, Clark, Henry, Muhlenberg, Webster, Clay, Hickman, Nelson, Whitley, Crittenden, Hopkins, Nicholas, Woodford, and Daviess.

FACTUAL BACKGROUND

KU's NMS-2 Tariff

² KY PSC Case No. 2020-00349, *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 filed Nov. 25, 2020). NOTE: KU and Louisville Gas and Electric Company ("LG&E") each filed applications with the Commission with the latter's application assigned and processed as Case No. 2020-00350. In many instances, the Companies filed joint pleadings and the Commission issued a joint Order for both Case No. 2020-00349 and Case No. 2020-00350.

4. On November 25, 2020, KU filed with the Commission an Application for relief that included, among other things, Commission approval of a new Standard Rate Rider, NMS-2 or Net Metering Service-2.

5. Per the Application, KU proposed an NMS-2 tariff, at pertinent part, that would be:

Available to any Customer-generator who owns and operates a generating facility located on Customer's premises that generates electricity using solar, wind, biomass or biogas, or hydro energy in parallel with Company's electric distribution system to provide all or part of Customer's electrical requirements, and who executes Company's Application for Interconnection and Net Metering on or after January 1, 2021. The generation facility shall be limited to a maximum rated capacity of 45 kilowatts.³

6. Per the Application, KU proposed an NMS-2 tariff, at pertinent part, that would calculate energy rates and credits in the following manner:

For each billing period, Company will (a) bill Customer for all energy consumed in accordance with Customer's standard rate and (b) Company will provide a dollar denominated bill credit for each kWh of production. The dollar denominated bill credit will be calculated by multiplying the total kWh of production **within the billing period** by the Non-Time-Differentiated SQF rate within tariff Sheet No. 55. Any bill credits greater than the Customer's total bill will be carried forward to future bills. (**Emphasis added.**)

Unused credits existing at the time Customer's service is terminated, end with Customer's account, have no monetary value, and are not transferrable between locations.⁴

7. In response to a request for information in Case No. 2020-00349, KU, at pertinent part, explained its proposed billing practice for NMS-2:

The quoted rider NMS-2 language is not complete. As stated in the Rider NMS-2, "Company will (a) bill Customer for all energy consumed in accordance with Customer's standard rate and (b) Company will provide a dollar denominated bill credit for each kWh

³ Case No. 2020-00349, Application (filed Nov. 25, 2020), Filing Requirements 1 of 3 [PDF 115 of 1864], Exhibit "A" to the Amended Formal Complaint.

⁴ *Id.*

of production.” The Company’s meters for Rider NMS-2 customers are capable of measuring energy flow in both directions (See KRS 278.466(2) - Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions). Thus, over the billing period, the meter will accumulate the amount of energy delivered to the customer (i.e., energy consumed by the customer) and the amount of energy the customer-generator delivers to the Company (i.e., energy put back onto the grid). The customer-generator will pay the standard tariffed rate for energy consumed and will get a bill credit for energy put back onto the grid at the Rider SQF rate.⁵

8. KU’s proposed methodology for the NMS-2 netting period is properly characterized as an instantaneous credit or instantaneous netting approach, **a netting period methodology that limits the amount of self-consumption that a customer-generator can achieve within a billing period.**
9. **In Commission Case No. 2020-00174,⁶ Kentucky Power Company’s (“KPC”) most recent application for a general adjustment in rates and the first rate case application which proposed a second-generation net metering tariff, the Commission expressly rejected KPC’s proposed netting periods finding that they limited “the amount of self-consumption that a customer-generator can achieve within a billing period.”⁷**
10. **In Case No. 2020-00174, regarding netting periods, the Commission further found “that Kentucky Power shall continue to net the total energy consumed and the total**

⁵ KU response to Kentucky Solar Industries Association, Inc.’s Initial Request for Information (filed Jan. 22, 2021), Item 17 [PDF 34, 35 of 52], Exhibit “B” to the Amended Formal Complaint.

⁶ *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).

⁷ Case No. 2020-00174, Order (KY P.S.C. May 14, 2021), at pages 24 and 25, Exhibit “C” to the Amended Formal Complaint.

*energy exported by eligible customer-generators over the billing period in NMS II consistent with NMS I.”*⁸ (Emphasis added.)

11. In response to a hypothetical question concerning the proposed netting period served upon KU by Commission Staff, KU stated that its proposed methodology would operate to prevent a customer-generator from using excess kWh production outside of the one-hour billing period (“12-1 p.m.”) on the same day (“later in the evening”).⁹
12. 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. 2020-00174 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).¹⁰

⁸ *Id.*

⁹ KU Response to Staff’s Eighth Request for Information (filed Aug. 13, 2021), Item 2. [PDF 8, 9 of 1261], Attached as Exhibit “D” to the Amended Formal Complaint

¹⁰ Case No. 2020-00349, Order (KY P.S.C. Sept. 24, 2021), at page 48, Exhibit “E” to the Amended Formal Complaint.

13. Through an Order entered on September 24, 2021, the Commission **found “that LG&E/KU’s proposed methodology for NMS 2 netting period is not fair, just and reasonable” and thereafter rejected the methodology**, 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.¹¹
14. **The modification required by the Commission’s September 24, 2021, Order is for KU, consistent with NMS-1 and the Commission’s finding in Case No. 2020-00174, to use a netting period in excess of the rejected netting period, more specifically to use a netting period “over” the billing period rather than through an instantaneous methodology.**
15. 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.¹²
16. **KU, in revised tariff sheets filed on October 13, 2021, had no confusion over the fact that its netting period proposal had been rejected through the September 24, 2021, Order and that the required netting period was a two-step netting methodology “over” the billing period rather than the instantaneous segments proposed by KU.**¹³

¹¹ *Id.*, and at page 62.

¹² 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.

¹³ Filing No. TFS2021-00411 (filed Oct. 13, 2021) P.S.C No. 20, Original Sheet No. 58. Exhibit “F” to the Amended Formal Complaint. As will be discussed, KU’s lack of confusion over the rejection of its netting period proposal is clear by KU’s request for relief before the Franklin Circuit Court seeking judicial approval of KU’s proposed NMS-2 filed with the Commission on November 25, 2020.

17. Through an Order entered on November 4, 2021, the Commission, among other things and at pertinent part, granted rehearing “**for the limited purpose of correcting an inadvertent omission** on page 48 of the September 24, 2021, Order.”¹⁴ **The Order on rehearing did not accept or otherwise approve the KU netting period proposed through its Application and rejected through the September 24, 2021, Order.**

18. With regard to the netting methodology for NMS-2, 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.**¹⁵ **(Emphasis added.)**

19. 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 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.

¹⁴ Case No. 2020-00349, Order (KY P.S.C. Nov. 4, 2021), page 25.

¹⁵ *Id.*

20. **The Order on rehearing, in pertinent part, preserved the Commission’s requirement that KU’s netting period methodology be “[c]onsistent with our finding in Case No. 2020-00174 and KRS 278.465(4).”¹⁶**
21. **On November 24, 2021,** KU and LG&E¹⁷ 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. 2020-00350.¹⁸
22. 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.¹⁹ The Companies, **in their Complaint to the Franklin Circuit Court,** assert that the Commission instead requires, through the pertinent Orders, **including the November 4, 2021, Order,** a two-step netting approach.²⁰
23. KU’s and LG&E’s initial Franklin Circuit Court pleading demonstrates the Commission’s rejection of **the Companies’ proposed** instantaneous credit or instantaneous netting **methodology** for all energy exported on to the grid for NMS-2. **The Companies’ acknowledgement of the rejection of their NMS-2 proposal in the Complaint is unremarkable in view of the language in the Commission’s September 24, 2021 Order stating: “[T]he Commission finds that LG&E/KU’s proposed methodology for NMS**

¹⁶ Case No. 2020-00349, Order (KY P.S.C. Nov. 4, 2021), pages 11, 12, and 25.

¹⁷ This Amended 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.

¹⁸ *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) (“Circuit Court Complaint”).

¹⁹ *Id.*, at page 13, Numbered Paragraph 47. Excerpt attached as Exhibit “G” to the Amended Formal Complaint.

²⁰ *Id.*

2 netting period is not fair, just, and reasonable, and should be rejected.” A finding that was not withdrawn or modified through the November 4, 2021, Order on rehearing.

KU’s Tariff NMS-2 Service to Saylor

24. Saylor is a KU customer falling within the scope of availability for net metering service under KU’s Tariff-NMS-2.
25. 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 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 period (469 kWh).²¹ KU, thereafter, calculated Saylor’s current electric charges based upon total usage for the period of 469 kWh.
26. 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. 2020-00349.²²
27. 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.²³ Saylor’s subsequent bill implements the instantaneous credit or instantaneous netting

²¹ Saylor initial bill, Exhibit “H” attached to the Amended Formal Complaint.

²² KU December 28, 2021, letter to Saylor, Exhibit “I” attached to the Amended Formal Complaint.

²³ Saylor’s subsequent bill, Exhibit “J” attached to the Amended Formal Complaint.

approach for KU's Tariff NMS-2, the proposed approach expressly rejected by the Commission through its Orders in Case No. 2020-00349.

28. 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.
29. **The requirement for KU to use a netting methodology "over" the billing period and a methodology consistent with its pertinent findings (rejecting netting periods that limit the amount of self-consumption that a customer-generator can achieve for the net metering billing period) in Case No. 2020-00174, is stated in both the September 24, 2021, Order and the November 4, 2021, Order on rehearing.**
30. 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's Standard Rate Rider for NMS-2 Issued November 9, 2021

31. KU issued Tariff NMS-2 on November 9, 2021.²⁴
32. 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.
33. 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).
- Indeed, while KU stated its "understanding" of the November 4, 2021, Order on**

²⁴ Filing No. TFS2021-00467 (filed Nov. 9, 2021) P.S.C No. 20, First Revision of Original Sheet No. 58. Exhibit "K" attached to the Amended Formal Complaint; *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 "L" attached to the Amended Formal Complaint.

rehearing when making the tariff filing, KU's position concerning the lack of authority for the instantaneous netting approach is admitted through the subsequent (November 24, 2021) action of KU filing the Complaint seeking judicial review in the Franklin Circuit Court and requesting, among other things, a judicial approval of the netting methodology proposed in the tariffs filed by KU in its Application and rejected and not approved by the Commission's Orders in Case No. 2020-00349.²⁵

Claim I

KU's Tariff NMS-2 Implements an Unauthorized and Rejected Methodology For the Netting Period and Calculation of Complainant Saylor's Bill.

34. Saylor is directly interested in KU's Tariff NMS-2 (issued November 9, 2021) and is adversely impacted by KU's unlawful and unauthorized instantaneous credit or instantaneous netting approach. KU's 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 unlawful and unauthorized billing practice.
35. In this instance, KU seeks to recover from Saylor an amount based, in part, upon 1,013 kWh usage imported from KU for the billing period with the 544 kWh generation exported on to the grid *not* netted against the 1,013 kWh in order to determine the corresponding multiplier for calculating current electric charges.
36. Based upon the Orders in Case No. 2020-00349, KU is entitled to recovery from Saylor an amount based, in part, upon 469 kWh usage for the billing period correctly arrived at through netting the 544 kWh export on to the grid against the 1,013 kWh of usage imported

²⁵ Franklin Circuit Court Complaint (filed Nov. 24, 2021), page 14; Exhibit "G" to the Amended Formal Complaint. The fiction of KU's November 9, 2021 "understanding" is aptly demonstrated by the reality of KU's characterizations concerning the same Order made to the Franklin Circuit Court on November 25, 2021.

from the Company in order to determine the corresponding multiplier for calculating current electric charges.

37. KU's Tariff NMS-2 seeks to implement an unlawful and unauthorized and rejected methodology for the KU Tariff NMS-2 netting period.

38. KU's Tariff NMS-2 instantaneous credit or instantaneous netting is a void practice.

CLAIM II

SAYLOR ESTABLISHES A *PRIMA FACIE* CASE

39. The above numbered paragraphs are incorporated herein as if fully set out below.

40. 807 KAR 5:001, Section 20(4)(a), requires that the Commission examine and determine whether the 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.²⁶

41. 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 unlawful and 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.

²⁶ 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).

42. **The Commission's determination in its July 1, 2022, Order in the instant case that Saylor failed to state sufficient allegations to establish a *prima facie* case is premised upon the Commission rewriting both its September 24, 2021, Order and November 4, 2021, Order on rehearing to now (after the finality of the proceeding in Case No. 2020-00349 and the divestment of jurisdiction to conduct further proceedings in that docket) remove findings and conclusions concerning the netting period methodology to approve the very methodology that the Commission clearly rejected.**
43. **The Commission speaks through its Orders and Saylor is entitled to rely upon what the Commission said rather than be bound by what it could have said or the opposite of what was said. Assuming for argument that there was an error in either Order rejecting KU's proposed methodology (and Saylor does not concede this point), KRS Chapter 278 requires the error to be addressed through an Order correcting the matter and/or through an order of a court of competent jurisdiction. Neither of the foregoing corrective actions have taken place. The instantaneous netting period methodology in KU's NMS-2 Tariff remains void in that it does not trace its authority to a Commission Order authorizing its use and, in fact, directly contravenes the only Orders of the Commission discussing it.**

WHEREFORE, the Complainant respectfully requests the following relief:

1. The Commission find and conclude that Saylor has established a *prima facie* case;
2. In the event that Defendant KU fails to satisfy Saylor's Complaint, that the Commission find and conclude by Order that the instantaneous credit billing methodology in KU Tariff NMS-2 is void;

3. An Order from the Commission requiring KU to implement the Orders from Case No. 2020-00349 with regard to the NMS-2 netting period;
4. An Order from the Commission confirming that the Case No. 2020-00349 did not authorize instantaneous credit or instantaneous netting;
5. A full refund, with interest, of the amounts billed to and paid by Saylor through the implementation of the unlawful, unauthorized and void billing methodology in KU Tariff NMS-2; and
6. All other relief that Complainant is entitled.

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 11th 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