

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO KENERGY)	CASE NO.
CORP.'S COMPLIANCE WITH KRS 278.160 AND)	2020-00332
ITS NET METERING TARIFF)	

ORDER

The Commission, on its own motion and pursuant to KRS 278.260, establishes this proceeding to conduct a formal investigation into Kenergy Corp.'s (Kenergy) compliance with and application of Kenergy's Net Metering tariff.

Kenergy is a nonprofit, member-owned rural electric cooperative corporation organized under KRS Chapter and is subject to the Commission's jurisdiction pursuant to KRS 278.010(a), KRS 278.040, and KRS 279.210. Kenergy is engaged in the distribution and sale of electric energy to 58,104 customers in Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union, Webster counties, Kentucky.¹

Kenergy's Net Metering tariff provides, in pertinent part, that:

Net Metering is available to eligible customer-generators in Kenergy's service territory, upon request, and on a first-come, first-served basis up to a cumulative capacity of one percent (1 %) of Kenergy's single hour peak load in Kentucky during the previous year. If the cumulative generating capacity of net metering systems reaches 1 % of Kenergy's single hour peak load during the previous year, upon Commission approval,

¹ Annual Report of Kenergy Corp. to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31 , 2019 (filed March 20, 2020), at 44 and 52.

Kenergy's obligation to offer net metering to a new customer-generator may be limited.² (Emphasis added.)

On information and belief, the Commission believes that Kenergy is not complying with the Net Metering tariff. Even if Kenergy has reached the one percent threshold, which is a fact to be determined in this proceeding, Kenergy is not making the terms and conditions of service provided for in the Net Metering tariff available to Kenergy's qualifying customer-generators, and Kenergy has not received Commission approval to limit offering net metering.

KRS 278.160 codifies the "filed rate doctrine." It requires a utility to file with the Commission, "schedules showing all rates and conditions for service established by it and collected or enforced." It further states that:

No utility shall charge, demand, collect, or received from any person a greater or less compensation for any service rendered than that prescribed in its filed schedules, and no person shall receive any service for any utility for compensation greater or less than that prescribed in such schedule.

The Kentucky Court of Appeals has described the filed rate doctrine as:

[T]he proposition that when the legislature has established a comprehensive ratemaking scheme, the filed rate defines the legal relationship between the regulated utility and its customer with respect to the rate that the customer is obligated to pay and that the utility is authorized to collect.... While the doctrine has not been applied by name in Kentucky, its underlying principles are incorporated and recognized in both our statutory and our case law.³

² Kenergy's Tariff, PSC No. 2 Sheet No. 46.

³ *Cincinnati Bell Telephone Co. v. Kentucky Public Service Com'n*, 223 S.W.3d 829, 837 (Ky. App. 2007) (internal citations omitted).

Thus, Kenergy's Net Metering tariff sets out the legal relationship between Kenergy and Kenergy's eligible customer-generators. Specifically, if Kenergy has not met the one percent threshold, or upon reaching the one percent threshold has not received Commission approval to limit offering net metering, it must make net metering available to eligible customer-generators. Failure to make net metering available to eligible customers is a *de facto* violation of KRS 278.160. Should the Commission find that Kenergy has violated KRS 278.160 by not complying with the Net Metering tariff, the Commission may impose penalties pursuant to KRS 278.990,⁴ and take any further action deemed necessary pursuant to KRS 278.270 and KRS 278.280.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. This proceeding is initiated to investigate and examine Kenergy's possible violations of KRS 278.160.
2. The electronic filing procedures set forth in 807 KAR 5:001, Section 8, shall be used in the processing of this matter.
3. Within 15 days of the date of entry of this Order, Kenergy shall file with the Commission:
 - a. Evidence that Kenergy has met the one percent threshold in the Net Metering tariff; and
 - b. Responses to the allegation that Kenergy has violated its Net Metering tariff by not offering net metering to qualifying customers.

⁴ KRS 278.990 provides that the Commission may penalize a utility or any employee, agent, or officer of a utility, for violating any provision of KRS Chapter 278.

4. Kenergy, by counsel, shall enter an appearance in this proceeding within seven days of the date of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Kenergy, by counsel, shall file a written statement with the Commission that:

a. Certifies that it, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

6. The Commission directs Kenergy to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085⁵ regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency. All responses in paper medium shall be appropriately bound, tabbed, and indexed. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

⁵ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

By the Commission



ATTEST:

A handwritten signature in blue ink, appearing to be "W. A. ...", written over a horizontal line.

Acting Executive Director

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