COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF DUKE ENERGY KENTUCKY, INC. TO COMPLY WITH KRS 278.466 AND 807 KAR 5:006, SECTION 7	)))	CASE NO. 2022-00391

O R D E R

This case was opened on January 11, 2023, to investigate whether Duke Energy Kentucky, Inc. (Duke Kentucky) failed to comply with KRS 278.466, 807 KAR 5:006, Section 7, or the Commission's final Order in Case No. 2019-00271,[1] in any instances similar to the facts in Case No. 2021-00324,[2] in which Duke Kentucky changed its net metering bill format and failed to carry over net metering generation credits. The case was also opened to determine whether civil penalties should be assessed to Duke Kentucky. Duke Kentucky responded to two data requests from Commission Staff[3] and on May 30, 2023, requested that the matter be submitted for decision based upon the existing evidentiary record.

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[1] Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) an Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Apr. 27, 2020), Order at 54.

[2] Case No. 2021-00324, *Joseph J. Oka v. Duke Energy Kentucky, Inc.* (Ky. PSC Jan. 10, 2023), Order.

[3] Duke Kentucky's Response to Commission Staff's First Request for Information (Staff' First Request) (filed Feb. 27, 2023); Duke Kentucky's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Mar. 27, 2023).

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.[4] 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) states

> If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars ($25) nor more than two thousand five hundred dollars ($2,500).

Although this statutory provision is not completely clear as to whether "willfully" applies to each clause, the Kentucky Court of Appeals expressed that willfulness was a prerequisite to assessment of a civil penalty.[5] Regardless, "willfully" clearly applies to utilities violating specific statutes or regulations. This interpretation was supported by a recent Commission decision, which stated that "the Commission must also determine whether these violations are willful before any penalties may be assessed under KRS 278.990" and defined willful behavior as follows:

> A willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily. It has also been stated that a willful violation does not necessarily and solely

[4] *See* KRS 278.040(1)-(2).

[5] *Public Service Com'n v. Jackson County Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 769 (Ky. App. 2000).

> entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences. For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.[6]

BACKGROUND

This case originated from a complaint filed by Joseph J. Oka in Case No. 2021-00324, in which he alleged that Duke Kentucky billed and credited him incorrectly for net metering and changed his bills in a manner that made it impossible for him to determine whether he was being properly billed and credited.[7] The Commission denied Mr. Oka's complaint, in part, because Duke Kentucky had not committed certain alleged violations, and, in part, because Duke Kentucky committed other violations but had satisfied the complaint by rectifying those deficiencies by the time of the issuance of a final Order resolving the matter.[8] According to Duke Kentucky, these deficiencies were the result of comprehensive changes to its billing system that took place from 2021 to 2022.[9]

The Commission found that Duke Kentucky violated 807 KAR 5:006, Section 7(3), and the Commission's final Order in 2019-00271 by removing the usage graph, included in its standard bill format per tariff, from Mr. Oka's bills from April 2021 to March 2022.[10] In the present case, Duke Kentucky indicated that this change affected a total of eight

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[6] Case No. 2021-00339, *Electronic Alleged Failure of North Manchester Water Association, Inc., Its Officers, Steve Davis, Bill Hurd, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, Ted Woods, Carl David Crawford, and Its Manager, Jerry Rice, to Comply with KRS 278.140, KRS 278.230, 807 KAR 5:006, Sec. 4, and KRS 278.990* (Ky. PSC Mar. 7, 2023), Order at 6 (citations omitted).

[7] Case No. 2021-00324, *Joseph J. Oka v. Duke Energy Kentucky, Inc.* (filed Aug. 11, 2021).

[8] Case No. 2021-00324, Jan. 10, 2023 Order at 6-7.

[9] Response of Duke Energy Kentucky, Inc. (Response) (filed Jan. 31, 2023), at 2-3.

[10] Case No. 2021-00324, Jan. 10, 2023 Order at 6.

customers.[11] Graphs resumed being printed on all bills after February 14, 2022.[12] Duke Kentucky stated that an issue in its legacy billing system occurred where the bill format did not display a usage graph when there were 11 or more consecutive months of a net zero usage billed.[13]

The Commission further found that Duke Kentucky violated 807 KAR 5:006, Section 7(1)(a)(3) because from February 2021 to April 2022, it ceased including complete meter reading information on its net metering bills.[14] Net metering bills did not indicate the amount of power delivered to the grid using the new bi-directional meter, making it difficult for Mr. Oka to determine whether his generation credits were being applied. Duke Kentucky asserted that this was not a willful violation; however, it also stated that it was aware this change would occur.[15] Duke Kentucky stated that it was unable to depict the generation component of its net metering calculations on the customer bill during this time and informed net metering customers of this temporary change.[16] This change affected all net metering customers.

Lastly, the Commission found that Duke Kentucky violated KRS 278.466(4) on two occasions in calculating Mr. Oka's bills.[17] On Mr. Oka's December 2021 bill, Duke Kentucky failed to compensate Mr. Oka for carryover generation credits. This error was

[11] Duke Kentucky's Response to Staff's First Request, Item 1.

[12] Case No. 2021-00324, Duke Kentucky's Response to Commission Staff's Second Request for Information (filed May 24, 2022), Item 2.

[13] Duke Kentucky's Response to Staff's Second Request, Item 1(b).

[14] Case No. 2021-00324, Jan. 10, 2023 Order at 6.

[15] Response at 3.

[16] Response at 3.

[17] Case No. 2021-00324, Jan. 10, 2023 Order at 6-7.

subsequently corrected on the February 2022 bill. Duke Kentucky explained that the December 2021 error was caused by incorrect manual calculation.[18] During Duke Kentucky's billing system transition, it was using manual calculations for net metering bills. Duke Kentucky indicated that these functions are now automated.[19] Duke Kentucky indicated it reviewed all manually calculated net metering bills that were calculated by the employee who made the error when calculating Mr. Oka's account and found no other errors.[20] Duke Kentucky also explained that an analyst performed monthly quality assurance checks on a random set of net metering accounts for each company employee who performed the manual calculations of net metering bills.[21]

On Mr. Oka's June 2022 bill, Duke Kentucky failed to carry over Mr. Oka's generation credit balance—zeroing it out completely. Duke Kentucky corrected this matter in the following bill. Duke Kentucky explained that this error was caused by a technical defect that reset excess generation to zero and affected 160 net metering customers.[22] As it was alerted to the issue with Mr. Oka's bill, Duke Kentucky corrected his account in August 2022. Duke Kentucky claimed it was not aware of this issue with the other 159 customers until November 2022.[23] At that time, Duke Kentucky credited

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[18] Response at 3.

[19] Response at 2.

[20] Duke Kentucky's Response to Staff's Second Request, Item 5(b).

[21] Duke Kentucky's Response to Staff's Second Request, Item 5(b).

[22] Response at 2.

[23] Response at 2.

their accounts for a total of approximately $58,000 and informed them of the error with a letter in their bills.[24]

DISCUSSION AND FINDINGS

Having reviewed the record and being advised, the Commission finds that Duke Kentucky failed to perform its duties imposed by 807 KAR 5:006, Section 7(3) and the Commission's Order in Case No. 2019-00271, 807 KAR 5:006, Section 7(1)(a)(3), and KRS 278.466(4). The Commission finds that regardless of the number of customers affected by these violations, only four errors were made—thus, Duke Kentucky committed four violations. The Commission finds that only the change in representing net metering bills in violation of 807 KAR 5:006, Section 7(1)(a)(3), was willful because Duke Kentucky indicated it had knowledge of the change and proceeded anyway.

In Case No. 2021-00324, the Commission found that Duke Kentucky violated 807 KAR 5:006, Section 7(3), which states "[e]ach utility shall include the billing form; including an e-bill form, if applicable; to be used by it, or its contents, in its tariffed rules." The Commission's final Order in 2019-00271 approved the sample bill provided in that case and incorporated it into its tariff. Duke Kentucky's violation affected the bills of eight customers, but only constituted a single violation because it resulted from a single mistake. This mistake was not willful because it was the result of a technical error and not intentional, knowing, voluntary, deliberate or obstinate behavior. Therefore, no civil penalty should be assessed for this violation.

Duke Kentucky also violated 807 KAR 5:006, Section 7(1)(a)(3), which requires bills to include "[p]resent and last preceding meter readings." Duke Kentucky's violation

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[24] Response at 2.

affected the bills of all net metering customers but only constituted a single violation because it resulted from a single mistake. This violation was willful, as Duke admitted it had knowledge of the billing change but still made the change. Therefore, a civil penalty of $2,500 should be assessed pursuant to KRS 278.990(1).

Lastly, Duke Kentucky was found to have violated KRS 278.466(4), which states in part:

> Each billing period, compensation provided to an eligible customer-generator shall be in the form of a dollar-denominated bill credit. If an eligible customer-generator's bill credit exceeds the amount to be billed to the customer in a billing period, the amount of the credit in excess of the customer's bill shall carry forward to the customer's next bill.

Duke Kentucky failed to perform its duties imposed by KRS 278.466(4) twice—one time affecting one customer, and one time affecting 160 customers. These two mistakes constituted two violations. These mistakes were not willful because they were the result of technical errors, not intentional, knowing, voluntary, deliberate or obstinate behavior. Therefore, no civil penalty should be assessed for these violations.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky failed to perform its duties imposed by 807 KAR 5:006, Section 7(3), and failed to obey the Commission's final Order in Case No. 2019-00271, affecting the bills of eight customers, constituting a single violation because it resulted from a single mistake.

2. Duke Kentucky is assessed no civil penalty for the violation set out in paragraph 1.

3. Duke Kentucky failed to perform its duties imposed by 807 KAR 5:006, Section 7(1)(3)(a), affecting the bills of all net metering customers, constituting a single violation because it resulted from a single mistake.

4. Duke Kentucky is assessed a civil penalty of $2,500 pursuant to KRS 278.990(1) for the violation set out in paragraph 3.

5. Duke Kentucky failed to perform its duties imposed by KRS 278.466(4) twice—one time affecting one customer, and one time affecting 160 customers. These two mistakes constituted two violations.

6. Duke Kentucky is assessed no civil penalty for the violations set out in paragraph 5.

7. Duke Kentucky shall pay the assessed $2,500 civil penalty within 30 days of the service of this Order. Payment shall be made by certified check or money order made payable to Kentucky State Treasurer and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602-0615.

8. This case will be closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

APR 19 2024

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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201