

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF CLARK)	CASE NO.
ENERGY COOPERATIVE, INC. TO COMPLY)	2023-00005
WITH KRS 278.160(2))	

ORDER

On August 22, 2023, Clark Energy Cooperative, Inc. (Clark Energy) filed a motion for rehearing, reconsideration and clarification pursuant to KRS 278.400, of the Commission’s August 2, 2023 Order requiring Clark Energy to issue refunds and credits to certain customers and show cause why it should not be assessed civil penalties for violations of KRS 278.160(2). On August 28, 2023, Clark Energy filed a motion for extension of time, seeking additional time to comply with the August 2, 2023 Order pending the outcome of the motion for rehearing, reconsideration and clarification.

LEGAL STANDARD

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹ An Order can only be unlawful if it violates a state or federal statute or

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

constitutional provision.² By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

The August 2, 2023 Order found that Clark Energy had violated KRS 278.160(2), which states that a “utility shall not charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules.” The Order found that Clark Energy violated this statute 45 times over the previous five years by transferring unpaid balances from delinquent customers to different customers at different service addresses. The Order noted that under 807 KAR 5:006, Section 15(1), a utility may only refuse or terminate service for nonpayment as follows:

(d) . . . [A] utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariffed charges until that person contracting for service has paid his indebtedness.

(f) . . . A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery.

ARGUMENTS

First, Clark Energy sought clarification as to the effect of the Commission’s reference to 807 KAR 5:006, Section 15(1)(f) in the August 2, 2023 Order to this case,

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

stating that this regulation allowed a utility to “require payment for service at a service address regardless of who is occupying the service address.”³ Clark Energy seeks to clarify whether the Commission intends for any subsequent occupant to be required to pay a previous occupant’s utility bill before taking service.

Second, Clark Energy requested rehearing, arguing that it should not be required to refund or credit any accounts because its interpretation of applicable regulations was reasonable. Clark Energy also stated that issuing refunds will cause problems, including refunds to individuals who are no longer members, refunds to joint account holders, returning debt to the original account holder, and refunds to customers who received funding from the Low-Income Home Energy Assistance Program (LIHEAP).

Third, Clark Energy argued that two payees entitled to credits or refunds under the Order should not receive credits or refunds. Clark Energy stated that one payee was already credited for the sum in question. Clark Energy stated that another payee should not be issued a refund because the customer was a joint account holder.

Lastly, Clark Energy asserted that it should not be required to show cause why it should not be assessed civil penalties because its interpretation of 807 KAR 5:006 Section 15(1)(d) was reasonable, and it ceased transferring delinquent balances to different customers’ accounts after the decision in Case No. 2022-00298.⁴ Clark Energy also noted that as a member-owned cooperative, it does not have shareholders to absorb such costs.

³ Order (Ky. PSC Aug. 2, 2023) at 3–4.

⁴ Case No. 2022-00298, *Katrina Marie Trusty v. Clark Energy Cooperative, Inc.* (Ky. PSC Jan. 20, 2023), Order. The Commission granted Complainant’s complaint on the basis that delinquent balances could not be transferred to different account holders.

Clark Energy also sought an extension of time to comply with the Commission's Order during the pendency of review of its motion for rehearing.

DISCUSSION AND FINDINGS

The Commission finds that clarification of its August 2, 2023 Order is necessary. As noted by Clark Energy, allowing it to terminate service at a point of service indefinitely would result in new occupants with no connection to the debtor potentially being required to pay the debt of another if Clark Energy were to require such payment. Although 807 KAR 5:006, Section 15(1)(f) does not provide an endpoint to the termination of service at a point of service other than upon full payment, Section 15(1) states that “[a] utility may refuse or terminate service to a customer only pursuant to the following conditions. . .” Indebtedness as a reason for refusal includes, under Section 15(1)(d), “. . . a utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariffed charges until that person contracting for service has paid his indebtedness.” One part of the regulation permits termination at a point of service, but another part of the regulation states that a utility may not refuse to furnish new service to a customer, unless that customer is a person contracting for service who is indebted to the utility.

The Commission finds that the only fair and reasonable way for these two provisions not to conflict and to maintain their intent is to interpret “new service” in Section (1)(d) to mean service at a different point of service. Under this interpretation, an individual living at the same point of service as the debtor while service was active cannot take new service at a point of service where he or she has already lived and taken service through the debtor. However, that individual would be entitled to new service at a different

point of service. Subsequent occupants who did not and are not occupying the point of service with the debtor would be entitled to take new service at that point of service.

The Commission is not swayed by Clark Energy's assertion that its interpretation of regulations was reasonable. During this case and predecessor Case No. 2022-00298, Clark Energy was unable to point to any concept of law that permitted it to create new debt unilaterally. The account holders for which refunds or credits were ordered did not incur the debt assessed and are entitled to recompense.

Clark Energy is correct that some customers may no longer be members and will have moved. Under such circumstances, refunds would be governed by KRS Chapter 393A regarding unclaimed property.⁵

Clark Energy is also correct that in some instances, the debtor may have reimbursed the account holder entitled to a refund or credit. Clark Energy should not speculate on the origin of the funds—all that is relevant is which party contracted with Clark Energy and which did not. Agreements between these parties are not within the Commission's purview.

Clark Energy also noted that transferring debt back to an original debtor may result in collection actions on an original account holder. This Order is intended to protect individuals from incurring debt who did not contract for that debt. If Clark Energy chooses to attempt to collect on debts incurred by the party who actually incurred the debt, that is Clark Energy's legal right. This Order does not require Clark Energy to do so.

⁵ Non-members with a credit balance after application of a credit shall be refunded for the amount of the credit balance.

Therefore, Clark Energy's motion for rehearing on the issue of issuance of refunds and credits should be denied, except as follows. Rehearing should be granted regarding any account for which LIHEAP funds were applied. Clark Energy stated that it "cannot be determined how much of the transferred amount was paid by LIHEAP funds since any LIHEAP funds would have been credited against the account as a whole."⁶ However, Clark Energy also stated that it refunds LIHEAP when a member disconnects, has a credit balance, and used LIHEAP funds. Rehearing is necessary to obtain new evidence regarding how Clark Energy should proceed when refunding such accounts.

Rehearing is also granted to obtain additional evidence regarding refunds or credits to a payee whom Clark Energy alleged was already credited for the sum in question and a payee whom Clark Energy alleged was a joint account holder with the debtor.

As noted above, the Commission disagrees with Clark Energy's assertion that its interpretation of regulations was reasonable. Therefore, rehearing is denied as to the August 2, 2023 Order's requirement that Clark Energy show cause why it should not be assessed civil penalties pursuant to KRS 278.990.

Clark Energy's motion for an extension of time should be granted to allow the Commission to further investigate the issues for rehearing before Clark Energy proceeds with issuing refunds and credits.

IT IS THEREFORE ORDERED that:

1. Clark Energy's motion for rehearing, reconsideration and clarification is granted in part and denied in part.

⁶ Motion for Rehearing, Reconsideration and Clarification (filed Aug. 22, 2023) at 4.

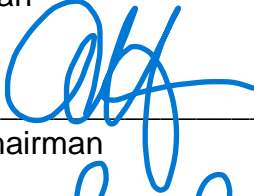
2. Clark Energy's motion for extension of time is granted.
3. Clarification is granted as indicated herein.
4. Rehearing is granted to obtain additional information on the issues of refunds for accounts receiving LIHEAP funds, refunds or credits to a payee whom Clark Energy alleged was already credited for the sum in question, and refunds or credits to a payee whom Clark Energy alleged was a joint account holder with the debtor.
5. Rehearing is denied on all other issues, including the issue of refunds or credits in general and the requirement that Clark Energy show cause why it should not be assessed civil penalties pursuant to KRS 278.990.

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PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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