

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

The Commission, on its own motion, pursuant to KRS 278.040, KRS 278.260(1), and KRS 278.990, initiates this proceeding to investigate the alleged failure of Clark Energy Cooperative, Inc. (Clark Energy) to comply with KRS 278.160(2).

BACKGROUND

This case arises out Case No. 2022-00298, in which Clark Energy was found to have violated KRS 278.160(2),¹ which states that a “utility may not charge, demand, collect, or receive from any person greater or less compensation than what is filed in that utility’s filed schedules.” In that case, the undisputed record showed as follows. Geneva Trusty’s service was disconnected by Clark Energy for nonpayment. Her daughter, Katrina Trusty, applied for new service at a different service address from Geneva Trusty, which was approved by Clark Energy. Clark Energy subsequently assessed Geneva Trusty’s outstanding balance to Katrina Trusty’s account, on the basis that Geneva Trusty was living with Katrina Trusty and a Low-Income Home Energy Assistance Program

¹ Case No. 2022-00298, *Katrina Marie Trusty v. Clark Energy Cooperative, Inc.* (Ky. PSC Jan. 20, 2023), Order at 2.

(LIHEAP) voucher issued to Geneva Trusty was submitted to Clark Energy for Katrina Trusty's account

The Commission found that Clark Energy's actions were not permitted by any tariff or provision of law² and that Clark Energy violated KRS 278.160(2) by attempting to collect from Katrina Trusty greater compensation than what was filed in Clark Energy's applicable tariff.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.³ 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) allows the Commission to assess a civil penalty of up to \$2,500 for each offense against any utility that willfully violates the provisions of KRS Chapter 278, Commission regulations, or any order of the Commission from which all rights of appeal have been exhausted.

Under KRS 278.160(2) a "utility may not charge, demand, collect, or receive from any person greater or less compensation than what is filed in that utility's filed schedules tariff."

² Under 807 KAR 5:041, Section 9(2), a utility is required to "regard each point of delivery as an independent customer and meter the power delivered at each point." Termination or refusal of service is permitted only for reasons set out in 807 KAR 5:006, Section 15(1), none of which applied to Case No. 2022-00298.

³ See KRS 278.040(1)-(2).

FINDINGS

The Commission finds that an investigation is necessary to determine whether Clark Energy has, on other occasions, impermissibly applied balances from one customer's account to another customer's account at a different service address in violation of KRS 278.160(2). Furthermore, the Commission finds that Clark Energy should be required to show cause why it should not be sanctioned pursuant to KRS 278.990 for violating KRS 278.160(2) in Case No. 2022-00298. The Commission further finds that a procedural schedule should be established to ensure the orderly processing of this case.

IT IS THEREFORE ORDERED that:

1. This case is opened to investigate the alleged failure of Clark Energy to comply with KRS 278.160(2).
2. Within 20 days of the date of service of this Order, Clark Energy shall cause to be filed an entry of appearance by an attorney licensed in Kentucky.
3. Within 20 days of the date of service of this Order, said attorney shall, on behalf of Clark Energy, submit to the Commission a written response to this Order identifying all instances for which it has records in which it applied balances from one customer's account to another customer's account at a different service address and explaining why Clark Energy should not be assessed a penalty pursuant to KRS 278.990 for improperly assessing Geneva Trusty's unpaid balance to Katrina Trusty's account.
4. The procedural schedule set forth in Appendix to this Order shall be followed. This schedule shall be amended if any intervenors are joined.

5. Clark Energy shall respond to requests for information propounded by Commission Staff by the date set forth on the request, whether the request appears on the procedural schedule.

6. All documents, records, and Orders included in the record of Case No. 2022-00298 are incorporated by reference into the record of this proceeding.

7. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001E, Section 8. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the Commission's July 22, 2021 Order in Case No. 2020-00085⁴ regarding filings with the Commission.

8. As set forth in 807 KAR 5:001E, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding that is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere

⁴ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001E, Section 8).

recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene filed after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

9. Clark Energy shall give notice of any scheduled hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). In addition, the notice of hearing shall include the following statement: “This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov”; and “Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, psc.ky.gov.” At the time publication is requested, Clark Energy shall forward a duplicate of the notice and request to the Commission.

10. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

11. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

12. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

13. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from

testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

14. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

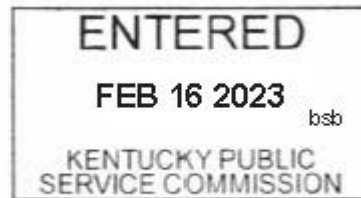
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PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00005 DATED FEB 16 2023

Last day for intervention requests to be accepted..... 02/21/2023

All initial requests for information to Clark Energy
shall be filed no later than 03/17/2023

Clark Energy shall file responses to initial requests for
information no later than..... 03/31/2023

All supplemental requests for information to Clark Energy
shall be filed no later than 04/14/2023

Clark Energy shall file responses to supplemental requests
for information no later than 04/28/2023

Last day for Parties to request a Public Hearing or submit a
request for the matter be decided based upon the written record 05/11/2023

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