

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE FORMAL)
COMPLAINT OF BILL E. WHALEY AGAINST) Case No. 17-00017-UT
KIT CARSON ELECTRIC COOPERATIVE,)
INC.)
_____)**

FINAL ORDER DISMISSING FORMAL COMPLAINT

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the formal complaint (“Complaint”) filed with the Commission by Bill E. Whaley (“Whaley” or “Complainant”) against Kit Carson Electric Cooperative, Inc. (“KCEC”).

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over the matters presented in the Complaint.
2. On February 1, 2017, Whaley filed the Complaint.¹
3. On February 7, 2017, the Commission issued a Notice of Complaint and Order Requiring Answer to KCEC.
4. Mr. Jerome Lucero had filed a related case No. 17-00019-UT against KCEC, on January 23, 2017, which alleged, among other things, similar claims of KCEC billing irregularities as alleged in Whaley’s Complaint.

¹ The Complaint: a) alleges KCEC engaged in "retroactive billing" or billing for an increase in energy services delivered prior to December 14, 2016, the effective date of the *Final Order Adopting Recommended Decision* in Case No. 15-00375-UT; b) alleges KCEC engages in "double billing" for the last day of service at the end of one month and the first day of service at the beginning of the following month; c) requests the Commission open an inquiry into KCEC's alleged "retroactive billing practices" to determine whether KCEC abides by the Commission's definitions of the terms "service," "usage," "days," and "billing periods"; and d) requests the Commission clarify the definitions of the terms "service," "usage," "days," "billing periods" and "bill date" and "due date" so that KCEC customers can know what to expect as these terms relate to the "effective" date of the rate increase.

5. On May 17, 2017, the Commission dismissed Lucero's Case No. 17-00019-UT, without prejudice for lack of probable and ruled that the billing allegations made in Case No. 17-00019-UT that relate to and/or overlap with the billing allegations made in Whaley v. KCEC, Case No. 17-00017-UT, will be fully examined and determined in the Whaley docket and expressly stated that: "Nothing in this Order precludes Lucero from filing a motion to intervene in the Whaley docket."

6. Mr. Lucero did not formally intervene in Case No. 17-00017-UT but did file a pleading in this docket on May 24, 2017 which continued to request KCEC clarification of the following questions.

Was there any overbilling on all non-metered services including state/county/Town of Taos lighting circuits and was there a subsequent refund? Was there any overbilling on the Chevron Mine Account and was there a corresponding refund? It is important that complete transparency is demonstrated on all types of accounts that KCEC has? These two accounts have not been mentioned? Despite KCEC's continued submittal of CEO and COO affidavits of their testimony without proof of what has been done I agree with the staff recommendation that a complete audit of their billing practices be mandated by the PRC COMMISSIONERS. A complete forensic audit is the only way to insure transparency. As a reminder I offer that the KCEC submitted cost of service in the overall rate case was full of untruths regarding costs that were associated with non-electric spending?

7. On February 23, 2017, KCEC filed its Answer to Whaley's Complaint.

8. On March 10, 2017, the Commission filed its First Bench Request Order.²

9. On May 22, 2017, the Commission filed its Second Bench Request Order which requested: i) that KCEC file a status report reporting on whether or not it has

²The First Bench Request Order required KCEC to file a status report describing the implementation of the change in rates that resulted in the billing errors as described in KCEC's Answer including the extent of the aforementioned inadvertent billing errors in terms of the number of customers affected; the aggregate amount of adjustments to KCEC's electric customer bills; evidence of number of KCEC customers who received refunds; total amount of refunds made to all KCEC customers; a list of individual amounts of refund made by KCEC; and a statement as to whether or not KCEC intends to make any further corrective actions in the future.

accomplished the refunds for the billing errors identified by Staff's Response to the First Bench Request Order pertaining to residential Rates 2, 17 and 18 who were affected by the implementation of the Final Order in Case No. 15-00375-UT and include the number of customers who received refunds and whether there are still remaining customers in these classes to whom refunds need to be made; and ii) that KCEC file a status report regarding the non-residential customers who were affected by the implementation of rates pursuant to the September 7th 2016 Order Terminating Suspension ("September 7th Order") and include whether all the necessary refunds have been accomplished and whether there are still were remaining customers affected by the implementation of the September 7th Order to whom refunds need to be made.

10. The Second Bench Request Order required Staff to file its response to KCEC's status reports stating whether KCEC has accomplished all of the necessary refunds to all ratepayers in all classes affected by the September 7th Order and whether KCEC has accomplished all of the necessary refunds to all ratepayers in all classes affected the Final Order in Case No. 15-00375-UT and should include a statement as to whether there still remaining customers to whom refunds need to be made.

11. KCEC filed its Response to the Second Bench Request Order on May 26, 2017.³

12. On May 26, 2017, the Commission issued its Third Bench Request Order which again requested the same information as the Second Bench Request Order.

³ Attached were the Affidavits of Mr. Luis A. Reyes Jr. and Mr. Richard A. Martinez for KCEC.

13. On June 2, 2017, Staff filed its Response to the Second and Third Bench Request Order.

14. KCEC filed its Reply to Staff's Response to Second and Third Bench Requests on June 9, 2017.

15. Both Staff's Responses and KCEC's Responses/Reply to the Second and Third Bench Request Orders stated that KCEC had not yet accomplished all of the necessary refunds to all ratepayers in all classes affected by the September 7th Order. According to Kit Carson's Response to Second Bench Request Order, 2,287 Rate No. 3 (Small Commercial) customers, identified as affected by the billing error resulting from the September 7th Order, would receive their refund during the second and third billing cycles in June. KCEC also stated that it is working with its billing contractor, South Eastern Data Cooperative ("SEDC"), to identify refunds for Rate No. 4 (Large Commercial) customers, which was more complicated than the Small Commercial customers due to the demand charge component of their bills.

16. Staff's Response added that KCEC had not accomplished all of the necessary refunds to all residential ratepayers in all classes affected by the implementation of the Final Order in Case No. 15-00375-UT – in particular, refunds needed to be made to certain residential Rate No. 1 customers for whom KCEC could not get a meter read as of December 14, 2016 due to meter technology limitations.

17. KCEC's Responses/Reply stated that it would provide those particular residential customers a refund based upon the average refund made to Rate No. 1 customers in KCEC's first billing cycle, per the recommendation on page 3 of the Staff Response to Bench Request, filed March 15, 2017. KCEC informed that those "average"

refunds would be made in KCEC's first June billing cycle, commencing June 5, 2017. KCEC's Responses/Reply further indicated that it had completed refunds to all affected Rate No. 2 residential seasonal customers in its second and third billing cycles, and would complete refunds to its remaining customers in its first billing cycle in June 2017. KCEC's Response/Reply also informed that refunds for customers in KCEC's first billing cycle were more complicated because that cycle includes both pre- and post-December 14, 2016 usage, requiring the KCEC to determine the meter reading on December 14, 2016 and calculate the appropriate billing for both. KCEC's Responses/Reply indicated that it would be providing refunds to its Rate No. 17 (Residential Time of Use) customers in its third billing cycle in June because all 353 affected customers are in Kit Carson's third billing cycle. KCEC informed that determining the appropriate refund to this class of customers is complicated by the time of use nature of Rate No. 17, as it must determine the correct on-peak and off-peak usage of each customer before and after December 14, 2016 in order to determine the appropriate refund. Lastly, KCEC's Response/Reply indicated that it would be providing refunds to its Rate No. 18 (Residential Seasonal Time of Use) customers in its third billing cycle in June. KCEC maintained that the issues regarding the determination of the refund for Rate No. 18 customers are similar to those for Kit Carson's Rate No. 17 customers.

18. On June 22, 2017, the Commission issued its Fourth Bench Request Order which ordered KCEC to file another status report reporting on whether it had accomplished all of the necessary refunds to all non-residential ratepayers affected by the

implementation of the September 7th Order⁴ and to file another status report reporting on whether or not it had accomplished the refunds for the billing errors identified by Staff's Response to the First Bench Request Order pertaining to the residential rates Rate Nos. 1, 2, 17 and 18⁵.

19. On July 20, 2017, KCEC filed its Response to Fourth Bench Request Order which provided the following report on the Number of Refunds made and the Amount of Refunds made to the **Residential Rate Class**: a) 460 customers in the **Rate No. 2 Residential Seasonal** class was completed (total refund was negative \$15.61); b) 353 customers in the **Rate No. 17 Residential Time of Use** class (total refund was \$8,118.93); c) 17 customers in the **Rate No. 18 Residential Seasonal Time of Use** class (total refund was \$250.66); d) 16,511 customers in the **Rate No. 1 Residential class** (total refund was \$156,373.06); and e) 444 customers in the **Rate No. 1 Residential class** that had electric service billings issued for the November and December 2016 billing periods (during the Rate 2-billing cycle) for whom Kit Carson could not get a meter read as of December 14, 2016 (total refund of \$2,211.12). **Total Residential Rate Class refund was \$166,944.16 to 17,785 customers.**

20. Additionally in KCEC's July 20th Response to Fourth Bench Request Order, KCEC provided the following report on the Number of Refunds made and the Amount of Refunds made the refunds to the **Non-Residential Rate Class**: a) 2,287 customers in the **Rate No. 3 Non-Residential Small Commercial** class (total refund \$44,443.59); b) 266 **Rate No. 4 Non-Residential Large Commercial** (total refund

⁴ Including the number of customers who received refunds and whether there are still remaining customers in these classes to whom refunds need to be made

⁵ Including the number of customers affected by the implementation of the Final Order in Case No. 15-00375-UT and include the number of customers who received refunds and whether there are still remaining customers in these classes to whom refunds need to be made

\$31,294.03); c) three (3) **Rate No. 16 Non-Residential Large Commercial, Time of Use** (total refund \$305.44); d) twenty-seven (27) **Rate No. 19, Non-Residential Small Commercial, Time of Use** (total refund \$803.67); e) one (1) **Rate No. 22, Non-Residential Irrigation** (total refund \$188.89); and f) one (1) **Rate No. 29, Chevron Special Contract** had no refunds. **Total Non-Residential Rate Class refund was \$447,035.62.**

21. In conclusion, on July 20, 2017, KCEC reported that there were 20,369 total KCEC customers affected and that the total amount of refunds made to KCEC customers was \$243,979.78.

22. On July 27, 2017, Staff filed its Response to Fourth Bench Request Order which found that KCEC had: a) accomplished all of the necessary refunds to all residential customers affected by the December 7, 2016 Final Order in the rate Case No. 15-00375-UT since KCEC had completed the billing adjustments to its Rate No. 1, Rate No. 2, Rate No. 17, and Rate No. 18 customers during the June 2017 billing period;⁶ and b) accomplished all of the necessary refunds to all of the non-residential customers who were affected by the Commission's September 7th 2016 Order since KCEC had completed the billing adjustments to these non-residential customers during the June 2017 billing period.

23. Based upon this information, Staff's Response to the Fourth Bench Request Order concluded that there are no more residential KCEC customers awaiting refunds arising out of Kit Carson's implementation of the December 7th Final Order and

⁶ These are the residential customer classes of Kit Carson that were affected by the December 7th Final Order in the rate Case No. 15-00375-UT.

that there are no more non-residential KCEC customers awaiting refunds arising out of Kit Carson's implementation of the September 7th 2016 Order.

24. However, Staff's Response again expressed concerns about the pace of the refund process and recommended an "independent review of KCEC's billing process be conducted now that the refunds process has been completed."⁷

25. On July 31, 2017, Whaley served upon the parties (but did not file in e-docket) his Response to KCEC's and Staff's Responses to the Fourth Bench Request Order complaining again that his original Complaint had attached exhibits of Mr. Whaley's electric bills, raised questions regarding bookkeeping and accounting or billing cycles v. service and charges for service that differed from bookkeeping and accounting dates raised issues about various procedural definitions; and attached a number of exhibits showing charges to El Prado Water and Sanitation (of which the Complainant is a member); charges to Taos County (of which entity the Complainant is a taxpayer) and charges for a single small commercial business, owned by member Ranee Malanga. For these reasons, Whaley urged the Commission to order KCEC to further clarify KCEC's response to Whaley in layperson's terms, including the rebate process and the inadvertent errors, by providing Whaley with a letter to the complainant and a letter to the members who provided Whaley with exhibits. Whaley urged the Commission to order KCEC to post on their web site a graphic explanation of the electric bills affecting the September 7, 2016 and December 7, 2016.

⁷ Staff's Response, page 4: "The initial billing errors resulted from Kit Carson's erroneous implementation of the September 7th 2016 Order to non-residential customers in the August-September 2016 billing period. That is nearly one year ago. The residential billing errors arose from KCEC's similarly erroneous implementation of the December 7 Order involving bills for the November-December 2016 billing period. That is more than 7 months ago. Staff cannot find a reasonable explanation for the extenuated time period it took for Kit Carson to identify and refund the erroneous bills."

26. On July 31, 2017, Mr. Lucero filed his Response to PRC Staff's Response to Fourth Bench Request Order.

27. On August 3, 2017, KCEC filed its Reply to Whaley's and Lucero's Response to KCEC's and NMPRC Staff's Response to Fourth Bench Request.

28. The Commission finds that KCEC's Reply has adequately replied to both Whaley's and Lucero's continued concerns as follows: a) Lucero Response again raised his billing concerns regarding his security lighting service, previously raised and fully addressed in NMPRC Case No. 17-00019-UT. In Reply, KCEC correctly noted that Commission issued its Final Order Dismissing Complaint Without Prejudice ("Final Order") on May 17, 2017, in which it concluded that Complainant Lucero was properly charged for the volume of kilowatt hours ("kWh") of electricity he used and properly charged for his security lighting; b) Lucero's Response raises the issue of "non-metered services" involving "state/county/Town of Taos lighting circuits." In Reply, KCEC correctly noted that Town/County of Taos Rate No. 6 – Lighting Service ("Rate 6"), was not included in Kit Carson's rate Case No. 15-00375-UT, and, for this reason, there was no change in that rate and no billing errors resulting from the December 7th Final Order or the September 7th Order in that case; c) Lucero's Response raised the issue of overbilling on the Chevron Mine Account, due to the rate Case No. 15-00375-UT, and whether there was a corresponding refund. In Reply, KCEC correctly noted that in that case, KCEC filed a proposed revision to its Rate No. 29 - Market Based Rate Schedule, for which Chevron Mining, Inc. was the only customer on that rate. Rate 29 is a non-residential rate that was not protested, and, therefore, Rate 29 rate change went into effect by the September 7, 2016 Order. However, on September 7, 2016, KCEC did not have a

signed contract with Chevron for the new rate being charged under revised Rate 29 and so there was no change in Chevron's Rate 29 September 2016 billing period for and, consequently, no billing error stemming from the implementation of September 7th Order for Chevron's September 2016 billing period; d) Lucero's Response and Whaley's Response both made claims regarding a lack of tangible evidence and lack of proof of the total amount of refunds made and the specific refunds made. In Reply, KCEC correctly noted that KCEC's affidavits and excel spreadsheets filed by both Mr. Reyes and Mr. Martinez explain how KCEC identified and calculated the billing adjustments to customers, and specifically identified the billing adjustments made to each customer's account. Copies of Whaley's electric service bills for this three residential accounts showing the refunds completed in March 2017 and listing them as "Rate Adjustments" on the bills for \$5.42, \$5.41 and \$5.11 were filed in this docket with KCEC's Response to Bench Request Order (March 14, 2017).

29. The Commission finds that, while it concurs with Staff that the entire refund process has taken almost one year, KCEC has sufficiently: a) accomplished all of the necessary refunds to all residential customers affected by the December 7, 2016 Final Order in the rate Case No. 15-00375-UT since KCEC had completed the billing adjustments to its Rate No. 1, Rate No. 2, Rate No. 17, and Rate No. 18 customers during the June 2017 billing period;⁸ and b) accomplished all of the necessary refunds to all of the non-residential customers who were affected by the Commission's September 7th 2016 Order since KCEC had completed the billing adjustments to these non-residential customers during the June 2017 billing period. Based upon this information, the

⁸ These are the residential customer classes of Kit Carson that were affected by the December 7, 2016 Final Order in the rate Case No. 15-00375-UT.

Commission finds there are no more residential KCEC customers awaiting refunds arising out of Kit Carson's implementation of the Final Order and further finds that there are no more non-residential KCEC customers awaiting refunds arising out of Kit Carson's implementation of the September 7th 2016 Order.

30. Based upon the reasons stated herein, the Commission finds that it does not concur with Lucero's statements in his Response or with Staff's Recommendation that an independent review of KCEC's billing practices is warranted at this time.

31. Given that the billing errors alleged in the Whaley Complaint and the Lucero matter have been substantially rectified, the Commission finds the Whaley Complaint should be dismissed with prejudice.

32. The Commission further finds it should grant Whaley's request for a layman's explanation of the following definitions, from KCEC in writing, of the terms "service," "usage," days," "billing periods", "bill date" and "due date" so that KCEC customers can know what to expect as these terms relate to the "effective" date of the rate increase, and post this explanation on the KCEC website.

33. The Commission finds it should grant Whaley's request the KCEC post on their website the attached graph (attached as Exhibit 1 to this Order) showing the aforementioned refunds made to KCEC customers due to billing errors in implementing the September 7 and December 7, 2016 Orders in the rate Case No. 15-00375-UT.

IT IS THEREFORE ORDERED:

- A. The Complaint is dismissed with prejudice.
- B. KCEC shall, within 30 days from the date of this Order, post on its website: 1) an explanation of the following terms: "service," "usage," days," and "billing

periods," "bill date," and "due date" so that KCEC customers can know what to expect as these terms relate to the "effective" date of the rate increase; and 2) post the attached graph (attached as Exhibit 1 to this Order) showing the aforementioned refunds made to KCEC customers due to billing errors in implementing the September 7 and December 7, 2016 Orders in the rate Case No. 15-00375-UT.

C. This Order is effective immediately.

D. This docket is closed.

E. Copies of this Order shall be served on all persons listed on the attached Certificate of Service, via e-mail to those whose e-mail addresses are known, and otherwise via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 30th
day of August, 2017.

NEW MEXICO PUBLIC REGULATION COMMISSION



SANDY JONES, CHAIRMAN



CYNTHIA HALL, VICE CHAIR



VALERIE ESPINOZA, COMMISSIONER



PATRICK H. LYONS, COMMISSIONER



LYNDA LOVEJOY, COMMISSIONER

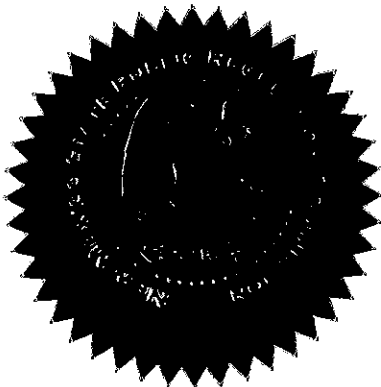


EXHIBIT 1

KCEC Rate No.		No. of Customers	Total Refund	Avg Refund
Residential Rate Class		Due a Refund	Per Rate Class	Amount
1	Residential	16,511	\$ 156,373.06	\$ 9.47
1	Residential (Avg)	444	\$ 2,211.12	\$ 4.98
2	Seasonal	460	\$ (15.61)	\$ (0.03)
17	Time of Use (TOU)	353	\$ 8,115.93	\$ 22.99
18	Seasonal Time of Use	17	\$ 259.66	\$ 15.27
Total Residential		17,785	\$ 166,944.16	
		No. of Customers	Total Refund	Avg Refund
Non Residential Rate Class		Due a Refund	Per Rate Class	Amount
3	Small Commercial	2,287	\$ 44,443.59	\$ 19.43
4	Large Commercial	266	\$ 31,294.03	\$ 117.65
16	Large Commercial - (TOU)	3	\$ 305.44	\$ 101.81
19	Small Commercial (TOU)	27	\$ 803.67	\$ 29.77
22	Irrigation	1	\$ 188.89	\$ 188.89
29	Chevron (Special Contract)		\$ -	
Total Non-Residential		2,584	\$ 77,035.62	
Total Affected Customers		20,369	\$ 243,979.78	

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE FORMAL COMPLAINT)
OF BILL E. WHALEY AGAINST KIT CARSON)
ELECTRIC COOPERATIVE, INC.)
_____)
)
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Case No. 17-00017-UT

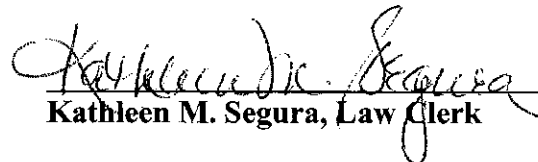
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Final Order Dismissing Formal Complaint** issued on August 30, 2017, was served via email on August 30, 2017, to the parties listed below:

Bill E. Whaley	bwhaley@newmex.com ;
Charles V. Garcia	cgarcia@cuddymccarthy.com ;
Laura E. Sanchez-Rivet	lsanchez-rivet@cuddymccarthy.com ;
John Reynolds	John.reynolds@state.nm.us ;
Bradford Borman	Bradford.Borman@state.nm.us ;
Jack Sidler	Jack.Sidler@state.nm.us ;
Milo Chavez	Milo.Chavez@state.nm.us ;
Vincent De Cesare	Vincent.Decesare@state.nm.us ;
Judith Amer	Judith.Amer@state.nm.us ;
Jerome Lucero	Jflucero9-12@q.com ;

DATED this 30th day of August, 2017.

NEW MEXICO PUBLIC REGULATION COMMISSION



Kathleen M. Segura, Law Clerk