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March 7, 2014

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: ***Jeff M. Short v. Kentucky Utilities Company***
Case No. 2013-00287

Dear Mr. DeRouen:

Enclosed please find, for filing, the original and ten (10) copies of Kentucky Utilities Company's Prehearing Comments in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our officer courier.

Yours very truly,

Kendrick R. Riggs

KRR:ec
Enclosures as mentioned
cc: Jeff M. Short

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:		
JEFF M. SHORT	)	
	)	
COMPLAINANT	)	
v.	)	**CASE NO. 2013-00287**
	)	
KENTUCKY UTILITIES COMPANY	)	
	)	
DEFENDANT	)	

PRE-HEARING COMMENTS OF KENTUCKY UTILITIES COMPANY

I. Introduction

Notwithstanding the lack of any statutory support for monetizing net-excess generation credits in Kentucky's Net Metering Statutes (KRS 278.465 et seq.), and in the face of multiple statutory provisions discussing such credits as being kilowatt-hour denominated electricity credits,[1] as well as one provision prohibiting monetizing such credits when a customer closes an account,[2] the Complainant, Jeff M. Short, asserts that the Defendant, Kentucky Utilities Company ("KU"), should credit him the cash value of any net-excess generation his yet to be installed photovoltaic ("PV") electric generating system may produce. His complaint asks the Commission to answer a hypothetical question by interpreting KRS 278.466 at variance with its stated language, and thereby commit legal error.[3] The plain meaning of the express language in KRS 278.466(3) is clear: "If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-

[1] KRS 278.466(5)(e).
[2] KRS 278.466(5)(d).
[3] *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 907 S.W.2d 766, 768 (Ky. 1995).

use billing agreement currently in place." The statute is a complete bar to the relief he requests. The Commission, like the courts, is not free to second-guess the General Assembly's legislative decision.[4]

KU believes the plain meaning of the language in Kentucky's Net Metering Statutes is that net-excess generation for time-of-use customers must be credited as kilowatt-hour denominated electricity credits, and that those credits must remain in the time-of-use period in which they were generated to offset future net energy consumption in the same time-of-use period, just as the statute prescribes. This approach accords with the plain meaning of Kentucky's Net Metering Statutes, KU's Commission-approved net-metering tariff provision (Net Metering Service Standard Rate Rider, Rider NMS), and sound public policy by ensuring KU's other customers do not have to overpay for their service. Unlike Mr. Short, the Commission cannot ignore the plain meaning of KRS 278.466(3) simply because Mr. Short believes another meaning might be considered to be a better policy.[5] His relief rests with the General Assembly and not the Commission. KU therefore respectfully recommends that the Commission deny all of the relief Mr. Short requests in his Complaint.

II. Fact Statement

The material facts in the record of this case are not in dispute. Mr. Short is a KU customer, who currently takes service under KU's Low Emission Vehicle Service Rate, Rate LEV.[6] Rate LEV contains three seasonally differentiated time-of-use rate periods: peak, intermediate, and off-peak.[7] Rate LEV has the same Basic Service Charge as KU's standard

[4] *Clark v. Riehl*, Ky., 230 S.W.2d 626, 628-629 (Ky. 1950).
[5] *Board of Education of Nelson County v. Lawrence*, Ky., 375 S.W.2d 830, 831 (Ky. 1963).
[6] Complaint at 1.
[7] Kentucky Utilities Company, P.S.C. No. 16, First Revision of Original Sheet No. 79.

residential rate, Rate RS, and lacks a demand charge, as does Rate RS.[8] Only the energy rates differ between the two rate schedules; Rate RS has a flat energy rate of $0.07744 per kWh, whereas the LEV peak rate is $0.14297 per kWh, the intermediate rate is $0.07763 per kWh, and the off-peak rate is $0.05587 per kWh.[9] After beginning service under Rate LEV, Mr. Short shifted much of his electric usage to the off-peak period of Rate LEV, to achieve the resulting savings.[10]

Mr. Short subsequently investigated the practicability of installing a PV electric generating system at his residence, and inquired of KU concerning potentially adding service under KU's Net Metering Service Standard Rate Rider, Rider NMS.[11] KU informed Mr. Short that he could take service under Rate LEV and Rider NMS, but that any net-excess generation he produced in a particular time period could be credited only against later usage in the same time period, e.g., peak net-excess generation could be used to offset only subsequent peak net consumption.[12] According to Mr. Short, this approach did not square with his internet research concerning net-metering practices, which Mr. Short believed should require KU to credit him for over-production by monetizing net-excess generation at the retail rate for each time-of-use period and allow Mr. Short to use that cash value against his remaining electric bill.[13] After KU did not concur with Mr. Short's view about net-excess generation crediting, Mr. Short eventually sent a letter to the Commission seeking resolution of his concern.[14] The Commission deemed the letter to be a customer complaint and opened this proceeding.

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[8] *See id.*; Kentucky Utilities Company, P.S.C. No. 16, First Revision of Original Sheet No. 5.
[9] Kentucky Utilities Company, P.S.C. No. 16, First Revision of Original Sheet No. 79.
[10] Complaint at 2.
[11] *Id.*
[12] *Id.*
[13] *Id.* at 1.
[14] Complaint.

III. The Commission Should Deny Mr. Short's Requested Relief Because It Would Require the Commission to Rewrite KRS 278.466 by Impermissibly Turning "Excess Kilowatt Hours" into "Cash Value of Excess Kilowatt Hours."

Ignoring the multiple uses of the plain language and the statute as a whole, Mr. Short myopically focuses on two words in one sentence in the statute to support his request for the Commission to rewrite the law: "If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and *accounted for* at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place."[15] Kentucky case law and statutes do not support Mr. Short's constrained interpretation of the law.

The cardinal rule of statutory interpretation is set forth in KRS 446.080(1): "All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature ...." Kentucky's courts have clarified that the primary means of determining the legislature's intent is the plain meaning of the statute: "In construing these statutes our goal, of course, is to give effect to the intent of the General Assembly, and we derive that intent, if at all possible, from the plain meaning of the language the General Assembly chose."[16] When determining the plain meaning of a statute's words, KRS 446.080(4) directs that "[a]ll words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning." And no statutory sentence should be considered in isolation; rather, the whole statute should be

[15] KRS 278.466(3) (emphasis added).
[16] *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478, 490-91 (Ky. 2009).

considered to help discern the meaning of its constituent sentences: "No single word or sentence is determinative, but the statute as a whole must be considered."[17]

Applying these canons of statutory interpretation to the lynchpin phrase of Mr. Short's statutory argument shows that the only permissible way to account for net-excess energy for a time-of-use customer in Kentucky is to use kilowatt-hour-denominated electricity credits applicable solely to the time-of-use period in which they were produced. First, the sentence is prescriptive, not permissive: "If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator *shall* be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place."[18] So whatever the sentence says about how to treat time-of-use net-excess generation, neither the Commission nor KU may deviate from it.

Second, the sentence itself speaks solely of electricity, not its monetary value: "If time-of-day or time-of-use metering is used, the *electricity* fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for ...."[19] This is consistent with the paragraph in which the key sentence appears:

> ***The amount of electricity billed*** to the eligible customer-generator using net metering shall be calculated by taking the difference between the ***electricity supplied*** by the retail electric supplier to the customer and the ***electricity generated*** and fed back by the customer. If time-of-day or time-of-use metering is used, the ***electricity fed back*** to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place.[20]

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[17] *County of Harlan v. Appalachian Healthcare*, 85 S.W.3d 607, 611 (Ky. 2002).
[18] KRS 278.466(4) (emphasis added).
[19] *Id.*
[20] KRS 278.466(3) (emphases added).

The words of this statutory provision are clear: the topic is how to account for electricity itself, not its value. The General Assembly could easily have demonstrated its intent to address the monetary value of electricity; for example, the General Assembly could have written, "The value of electricity billed to the eligible customer-generator using net metering shall be calculated by multiplying the applicable retail energy rate and the difference between the electricity supplied by the retail electric supplier to the customer and the electricity generated and fed back by the customer." But that is not what the legislature did; instead, the paragraph clearly addresses only amounts of electricity, not money.

This construction is consistent with the structure of KRS 278.466 as a whole. Nowhere in the statute is there any indication that utilities should monetize net-excess generation; rather, there are multiple provisions specifically treating net-excess generation credits as electricity, not monetary, credits:

> If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the *excess kilowatt hours* in accordance with subsections (3) and (4) of this section. This *electricity credit* shall appear on the customer-generator's next bill.[21]
>
> ...
>
> Excess *electricity credits* are not transferable between customers or locations.[22]

Moreover, there is a provision in the statute expressly forbidding converting net-excess generation credits into cash when a customer closes an account: "If a customer-generator closes

[21] KRS 278.466(5)(c) (emphases added).
[22] KRS 278.466(5)(e).

his account, no cash refund for residual generation-related credits shall be paid[.]"[23] Therefore, there is no sanction in the statute for turning net-metering electricity credits into money credits.

The actions of other legislatures bolster this reading of KRS 278.466(3); when legislatures do intend to have net-metering electricity credits, they know how to do it. Indeed, the two net-metering statutes the DSIRE Solar Policy Guide cites as being among the best in the nation demonstrate that legislatures know how to express their desire to monetize energy credits.[24] The first statute DSIRE cites as a model is Colorado's net-metering statute, which does in fact provide for all net-metering credits to be monetized at the end of each service year, though at an avoided cost rate, not the full retail rate Mr. Short desires:

> (1) ... In accordance with article 4 of title 24, C.R.S., the commission shall revise or clarify existing rules to establish the following:
>
> ...
>
> (e) A standard rebate offer program, under which:
>
> (I) ...
>
> (B) The standard rebate offer shall allow the customer's retail electricity consumption to be offset by the solar electricity generated. To the extent that solar electricity generation exceeds the customer's consumption during a billing month, such excess electricity shall be carried forward as a credit to the following month's consumption. To the extent that solar electricity generation exceeds the customer's consumption during a calendar year, the customer shall be reimbursed by the qualifying retail utility at its average hourly incremental cost of electricity supply over the prior twelve-month period unless the customer makes a one-time election, in writing, to request that the excess electricity be carried forward as a credit from month to month

[23] KRS 278.466(5)(d).

[24] Available at: http://www.dsireusa.org/solar/solarpolicyguide/?id=17. Note that Mr. Short has cited DSIRE as being an authority concerning net metering. *See* Complaint at 1.

> indefinitely until the customer terminates service with the qualifying retail utility, at which time no payment shall be required from the qualifying retail utility for any remaining excess electricity supplied by the customer.[25]

It is noteworthy that Colorado's statute permits a net-metering customer a choice: receive compensation for net-excess energy at the utility's avoided cost, or receive electricity credits that roll from month to month but disappear when the customer ends service, *but not both or a hybrid of the two*. Mr. Short is, in effect, asking KU to purchase energy from his hypothetical PV unit at the peak retail rate, a rate more than triple KU's actual average marginal cost of energy supply; he is asking to be able to consume almost three kilowatt-hours of energy off-peak for each kilowatt-hour of net peak production. Colorado's statute, which clearly does permit monetization, would not permit Mr. Short's requested approach.

The other statute DSIRE cites as a model is New Jersey's net-metering statute, which also provides for customers to receive compensation for net-excess generation at the utility's avoided-cost rate or its PJM-energy-purchase-cost rate, not its retail rate:

> If the amount of electricity generated by the customer-generator, plus any kilowatt hour credits held over from the previous billing periods, exceeds the electricity supplied by the electric power supplier or basic generation service provider, then the electric power supplier or basic generation service provider, as the case may be, shall credit the customer-generator for the excess kilowatt hours until the end of the annualized period at which point the customer-generator will be compensated for any remaining credits or, if the customer-generator chooses, credit the customer-generator on a real-time basis, at the electric power supplier's or basic generation service provider's avoided cost of wholesale power or the PJM electric power pool's real-time locational marginal pricing rate, adjusted for losses, for the respective zone in the PJM electric power pool.[26]

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[25] C.R.S. 40-2-124.
[26] N.J. Stat. § 48:3-87e(1).

As was true of Colorado's statute, New Jersey's statute would not permit Mr. Short's requested relief, namely to receive the money value—at the retail rate—for on-peak and intermediate net-excess generation. Instead, New Jersey's statute would permit Mr. Short to receive compensation at KU's avoided cost of wholesale power, which is less than the off-peak retail rate.

These statutory examples—cited by one of Mr. Short's authorities, DSIRE, as two of the best in the nation—show conclusively that legislatures know how to draft statutes that require monetization of net-metering credits.[27] KRS 278.466 is not such a statute.

Moreover, these statutes show that Mr. Short is requesting treatment that is more generous than even DSIRE's two vanguard states would allow. Indeed, they show that if KRS 278.466(3) is really as generous as Mr. Short believes, DSIRE has inexplicably overlooked it as a model for the rest of the nation.

In addition to the force of Kentucky's canons of statutory interpretation, KU's interpretation of KRS 278.466(3) finds support in the Commission's repeated approval of KU's net-metering tariff provisions, which explicitly define credits for net-excess generation to be energy credits, not monetary credits: "'Billing Period Credit' shall be the *electricity* generated by the customer that flows into the electric system and which exceeds the *electricity* supplied to the customer from the electric system during any billing period."[28] The Commission has held explicitly that KU's Rider NMS—including its definition of "Billing Period Credit"—complies with all of Kentucky's Net Metering Statutes, including KRS 278.466:

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[27] To be clear, KU does not take DSIRE to be authoritative. Indeed, it cannot be binding authority on the Commission: It is not a statute, administrative regulation, court, or administrative agency; rather, the "Database of State Incentives for Renewables and Efficiency" is just that, an online database of information operated by a university with support and sponsorship from other groups: "Established in 1995, DSIRE is currently operated and funded by the N.C. Solar Center at N.C. State University, with support from the Interstate Renewable Energy Council, Inc. DSIRE is funded in part by the U.S. Department of Energy." http://www.dsireusa.org/about/.

[28] Kentucky Utilities Company, P.S.C. No. 16, Original Sheet No. 57.5 (emphases added).

> Having reviewed the proposed net metering tariffs and application forms, the Intervenors' comments and reply comments, LG&E/KU's response comments and "sur-reply" comments, and the amended LG&E/KU net metering tariffs, the Commission finds that *the net metering tariffs and application forms filed by all of the jurisdictional utilities, except for Fleming-Mason Energy Cooperative and Taylor County RECC, are in compliance with the provisions of KRS 278.465-468 and the Net Metering Guidelines.*[29]

The case in which the Commission issued its Order approving KU's Rider NMS as complying with Kentucky's Net Metering Statutes was extensive, thorough, and competently litigated by all jurisdictional electric utilities, the Kentucky Attorney General, the Kentucky Resources Council, Appalachia - Science in the Public Interest, Solar Energy Solutions, Inc., and Joshua Bills. The Commission and the case participants dedicated over a year to litigating these issues. Neither Kentucky's Net Metering Statutes nor KU's Rider NMS has changed since the Commission's Order quoted above.[30] Moreover, since the date of that Order, the Commission has twice approved KU's entire tariff, including Rate NMS and its definition of "Billing Period Credit" as a kilowatt-hour-denominated electricity credit.

IV. Mr. Short's Arguments Against the Clear Intent of Kentucky's Net Metering Statutes Are Unavailing.

Against this clear legislative intent and the Commission's orders repeatedly approving KU's Rider NMS, Mr. Short argues: (1) the words "accounted for" mean monetization;[31] (2) the General Assembly intended KRS 278.466 to advance net metering, and monetizing net-excess energy credits would advance that purpose, particularly for time-of-use customers;[32] and (3) he

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[29] *In the Matter of: Development of Guidelines for Interconnection and Net Metering for Certain Generators with Capacity Up to Thirty Kilowatts*, Admin. Case No. 2008-00169, Order at 3 (August 17, 2009) (emphasis added).
[30] None of Kentucky's Net Metering Statutes have been amended since July 15, 2008. KU has applied for changes to its base rates and certain of its tariff sheets twice since the Commission's August 17, 2009 Order in Admin. Case 2008-00169, but in neither of those cases did KU request or the Commission order changes to KU's Rider NMS. *See* Case Nos. 2009-00548 and 2012-00221.
[31] Short Response to KU's Answer at ¶ 7 (Sept. 3, 2013).
[32] *Id.*

believes DSIRE and the Interstate Renewable Energy Council ("IREC") interpret Kentucky's net metering statutes to require KU to monetize net-excess generation credits.[33] All three of these assertions are in error.

If the legislature had intended utilities to monetize the credits, it could have used words similar to those of the following Alaska administrative regulation:

> [I]f the consumer supplied more electric energy to the electric utility than the electric utility supplied to the consumer during the monthly billing period, *the electric utility shall credit the consumer's account with an amount derived by multiplying the kilowatt-hours of net electric energy supplied by the consumer to the electric utility by the non-firm power rate contained in the electric utility's currently effective tariff*, unless a different non-firm power rate has been established in a commission-approved contract.[34]

The General Assembly's choice of "accounted for" rather than "monetized" or words similar to those above demonstrates that the legislature did not intend "accounted for" to direct monetization.

Correct statutory interpretation requires analyzing entire statutory provisions and statutes. Again, KRS 278.466(3) states in relevant part, "If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place." That is precisely what KU does: first, it net-meters a time-of-use customer's usage, meaning, in accordance with KRS 278.465(4), it "measure[es] the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period"; second, KU records—accounts for—the net-metered amount of electricity

[33] Complaint at 1.
[34] 3 AAC 50.930(a)(2) (emphasis added).

in the time-of-use period it is produced and gives the customer-generator energy credits in that same time-of-use period in future billing periods. KU does not diminish or increase the value of the credits by moving them across time-of-use periods, but rather preserves their value by crediting them against future use in the same time-of-use period. KU therefore "account[s] for" time-of-use net-excess energy credits consistently with the plain meaning of "account for" and thus with KRS 278.466(3).

Mr. Short's second assertion concerning statutory interpretation, namely that the General Assembly intended KRS 278.466 to encourage net metering, and that monetizing time-of-use net-excess generation credits at the applicable retail time-of-use rates would strongly encourage net metering, is similarly incorrect; it does not follow from the statute's clear intent to provide *some* favorable conditions for net metering that the statute must therefore contain *every possible* provision favorable to net metering, including monetization according to Mr. Short's design. Instead, the appropriate means of discerning legislative intent is discerning the plain meaning of a statute's text: "In construing these statutes our goal, of course, is to give effect to the intent of the General Assembly, and we derive that intent, if at all possible, from the plain meaning of the language the General Assembly chose."[35] As discussed at length above, there simply is no statutory language supporting monetization, and there is one clear prohibition against it (when a customer ends an account). Moreover, though the text of Kentucky's Net Metering Statutes do indeed provide some incentives for net metering, they do not do so boundlessly; the General Assembly did not include every conceivable inducement for net metering. For example, the General Assembly has limited the size of a net metering facility,[36] and has allowed utilities to

[35] *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478, 490-91 (Ky. 2009).
[36] KRS 278.465(2).

seek limits on new net metering customers after reaching a total system net-metering capacity.[37] The statutes do not require utilities ever to pay customers who have net-excess generation credits,[38] and a net-metering customer may not transfer credits to other customers or even other accounts the customer owns.[39] While Mr. Short may argue that the express language of KRS 278.466 does not go far enough to promote net metering policy, this Commission, like the courts of Kentucky, must accept the language of the law as written.[40]

Finally, Mr. Short's quote from DSIRE and IREC is misplaced. First and most importantly, neither DSIRE nor IREC is a legal authority in Kentucky. That notwithstanding, according to Mr. Short's complaint, one of IREC's net-metering best practices is, "Any customer net excess generation at the end of a billing period should be credited to the customer's next bill as a kWh credit (i.e., at the utility's full retail rate) indefinitely, until the customer leaves the utility's system."[41] That is what KRS 278.466(3) requires, and it is exactly what KU's tariff does. Rather than decreasing the value of net-excess generation to avoided cost as some states' statutes would require, KU carries forward kWh-denominated energy credits. That is what the quoted IREC best practice means; it is why the text says, "credited to the customer's next bill as a kWh credit," which is an electricity credit, not a money credit. Thus, KU's tariff actually does comply with the IREC best practice Mr. Short cites, and the Commission has approved KU's tariff that contains the definition of net-excess generation credits as energy credits, not money credits.

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[37] KRS 278.466(1).
[38] KRS 278.466(5)(d).
[39] KRS 278.466(5)(e).
[40] *Clark v. Riehl*, Ky., 230 S.W.2nd 626, 628-629 (1950)("...Legislative intent must be determined from the language used in the statute...[T]he wisdom or folly of Legislative enactments, within constitutional bounds, may not be weighted in judicial construction of a statute free of ambiguity.")
[41] Complaint at 1. The cited material is available at: http://www.dsireusa.org/solar/solarpolicyguide/?id=17.

V. Public Policy Supports the Clear Intent of the Legislature Not to Monetize Net-Excess Generation Credits.

Although KU believes policy arguments are not relevant to the interpretation of the statute because Kentucky's statutory and precedential canons of statutory interpretation necessitate denying Mr. Short his requested relief, KU offers the following policy implication of Mr. Short's complaint for the Commission's consideration. Using Mr. Short's own projection from the last page (Table 1) of his letter dated May 14, 2013, if the Commission rewrites KRS 278.466(3) as Mr. Short desires, and if his potential PV system performs according to his projections and he uses energy as he projects, then he will entirely offset his annual energy costs (not his entire bill, just his energy costs) even though he will consume 2,745 kWh more energy than he will produce. In other words, he will receive nearly 3,000 kWh of net energy at no cost to him. Of course, the energy he consumes is not actually cost-free; KU's other customers will ultimately have to pay for it.

Mr. Short would likely counter that he will in fact provide value commensurate with his bill savings; after all, he will produce power at high-value times, as shown by KU's $0.14297/kWh retail rate for on-peak hours.[42] But that argument is mistaken. The time-of-use rates for Rate LEV bear no meaningful relation to KU's actual marginal energy costs during the various time-of-use periods. As noted above, KU's average marginal energy cost for the Rate LEV peak hours is less than one-third of the Rate LEV peak retail rate. In sum, Mr. Short is asking his neighbors—KU's shareholders in the short term, but his neighbors in the mid- and long-term—to pay him dramatically more for energy than they would pay on average if KU could buy it from other sources. The Kentucky Supreme Court has made clear that a statute

[42] Kentucky Utilities Company, P.S.C. No. 16, First Revision of Original Sheet No. 79.

"should not be interpreted so as to bring about an absurd or unreasonable result."[43] The Commission should therefore reject it.

VI. There Is No Tension or Conflict between Net Metering and Rate LEV.

Finally, KU would like to clarify that there is no tension or conflict between net metering and Rate LEV. Kentucky law requires KU to have Rider NMS, which rider this Commission has approved in its current form. The purpose of the rider is to permit customers who self-generate with certain technologies to do so to offset some or all of their own consumption.

That purpose is wholly unrelated to Rate LEV, which is an entirely voluntary experimental rate offered in a pilot program, the stated purpose of which is "to encourage off-peak power for low-emission vehicles."[44] The Company did not design the retail rates for Rate LEV to encourage load-shifting for existing customer loads; indeed, KU designed Rate LEV's rates to be revenue neutral with respect to an average residential customer's usage pattern, assuming the pattern did not change after the customer began taking service under Rate LEV.[45] Of course, the LEV rates do in fact provide an opportunity for customers to shift load away from peak and intermediate periods and reduce their energy bill because KU meters the load at the home and not just the vehicle charging station. And KU, recognizing the obvious financial signals of the rate and desiring to encourage their customers to reduce their bills, placed on its website material concerning Rate LEV that advises customers to shift load to save money on

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[43] *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Co.*, 983 S.W.2d 493, 500 (Ky. 1998).

[44] Kentucky Utilities Company, P.S.C. No. 16, Original Sheet No. 79.

[45] *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548, Direct Testimony of William Steven Seelye at 20 (Jan. 29, 2010):

> The LEV rate is structured as a time-of-day rate in order to provide customers with low emission vehicles an opportunity to charge their vehicles during lower cost off-peak hours. The time periods are defined in accordance with the large power time-of-day rates. The pricing is structured to be generally consistent with LG&E's current Real Time Pricing pilot program, except that the LEV rate does not include a critical peak pricing component. The LEV rate is designed to be revenue neutral with the Company's standard Residential Service Rate RS. In other words, when the time-differentiated unit charges for the proposed LEV rate are applied to estimated time-differentiated billing units for RS, the revenues are approximately equal to total RS revenues.

their bills.[46] But that common-sense advice does not change the original, fundamental purpose of Rate LEV, which was to encourage customers purchasing electric vehicles to charge their vehicles at night.

Mr. Short's perceived conflict between net metering and Rate LEV is actually more a matter of timing than genuine conflict. Concerning these two rate provisions, a customer's order of operations matters. A residential customer with a fairly typical load pattern who installs a PV system and participates in Rider NMS will likely receive a benefit by adding an electric vehicle and moving to Rate LEV from Rate RS, and will likely receive that benefit without having to shift load. Mr. Short, however, started on Rate LEV, shifted his usage to maximize his savings, and is now finding it difficult to justify the cost of a PV system of the size he would like because he has so little peak and intermediate-period usage, and therefore so little potential financial gain to be had, in the peak and intermediate periods.

What this demonstrates is that there is nothing inconsistent about the purposes of net metering and Rate LEV and it is entirely possible for a customer to take service under Rate LEV and Rider NMS. Mr. Short's real complaint—which is still hypothetical at this point—is that, having already received financial benefits for taking service under Rate LEV, he will not receive as much extra financial benefit as he would like if he installs PV and participates in Rider NMS, though he certainly will receive the value of his generation in each time-of-use period, and he could regain some benefit by shifting load back into the peak or intermediate periods if he chose to do so.[47] And if Mr. Short desires to be paid for his potential PV system's energy production,

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[46] *See* http://www.lge-ku.com/ev/qa.asp ("To take full advantage of the LEV rate, customers should plan to charge their vehicles overnight and move other discretionary energy use to Intermediate or Off-Peak times where possible to maximize the benefit of the lower rates.").

[47] Furthermore, Mr. Short may return to taking service under Rate RS (Residential Service) and then participate in Rider NMS if he believes his financial results will be better under such an arrangement.

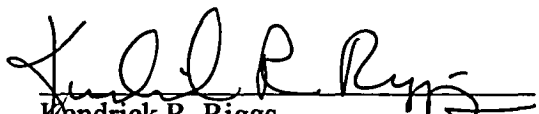
KU has proposed he take service under KU's Small Capacity Cogeneration Qualifying Facilities tariff rider, Rider SQF, which would allow him the option of receiving time-differentiated payment for his potential PV energy production. But Kentucky's Net Metering Statutes and KU's Commission-approved Rider NMS simply do not permit the financial arrangement Mr. Short desires, and the Commission must deny the relief Mr. Short requests in his Complaint.

VII. Conclusion

Mr. Short's efforts to minimize his usage, to shift his usage to the off peak period of Rate LEV, and to seek to supply some or all of his energy usage with PV-generated electricity are noteworthy. But his desire to monetize any net-excess generation credits he might produce if he installs a PV system is flatly contrary to the plain meaning of KRS 278.466(3) and the structure of all of Kentucky's Net Metering Statutes. In addition, requiring KU to monetize such credits could result in Mr. Short receiving significant amounts of energy paid for by KU's other customers. There is simply no justification in law for granting the relief Mr. Short has requested; therefore, it must be denied.

Dated: March 7, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Pre-Hearing Comments of Kentucky Utilities Company was served upon the following person by first class United States mail, postage prepaid, on the 7th day of March 2014:

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(Defendant)