

facility through the addition of new solar panel modules and a new inverter.⁴ Further, Mr. Ricketts argued that LG&E should be prohibited from any action that is contrary to its advertised customer notices related to NMS compensation and legacy rights in Case No. 2020-00350, and requested that the Commission determine that Mr. Ricketts' interconnection application date serves as the "in service date" for Mr. Ricketts and other approved NMS customers.⁵ On July 2, 2021, LG&E was ordered to file a response to Mr. Ricketts Complaint, and on July 12, 2021, and July 16, 2021, respectively, LG&E filed a motion to dismiss the Complaint, and Mr. Ricketts replied in support of the motion.

LEGAL STANDARD

The regulations governing net metering availability, compensation, legacy rights, safety standards, and transferability are established in KRS 278.465 and KRS 278.466. In accordance with KRS 278.465(1)-(2), net metering applies to eligible customer-generators who own and operate an electric generating facility with a rated capacity of 45 kW or less that is located on the customer's premises for the primary purpose of supplying all or part of the customer's own electricity requirements. Legacy rights for customer generators with electric generating facilities in-service prior to an initial net metering order are specifically addressed in KRS 278.466(6), stating:

[T]he net metering tariff provisions in place when the eligible customer generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless of whether the premises are sold or conveyed during that twenty-five (25) year period. For any eligible customer-generator to whom this subsection applies,

⁴ *Id.* at 5, paragraph 12; and at 6.

⁵ *Id.* at 8, 9, and 11.

each net metering contract or tariff under which the customer takes service shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.

Here, the Commission defines “in-service” to be both installed and operating, consistent with the final Order in Case No. 2020-00350.⁶

COMPLAINT

On January 12, 2021, LG&E filed with the Commission a Certificate of Completed Notice in Case No. 2020-00350, notifying its customers that LG&E was seeking approval to adjust its electric and gas rates.⁷ The notice included, among other things, details regarding LG&Es proposed NMS compensation rates. The notice stated in pertinent part:

LG&E is proposing a new net metering rate schedule, Rider NMS-2, and renaming its existing Rider NMS to be Rider NMS-1. Rider NMS-1 will serve eligible electric generating facilities as defined in KRS 278.465(2) for which customers have submitted an application for net metering service before the effective date of rates established in this proceeding. Rider NMS-2 will apply to all other net metering customers. LG&E is also proposing new terms and conditions for Net Metering Service Interconnection Guidelines.⁸

The notice included language advising LG&E customers that a full, detailed notice of all proposed revisions and a complete copy of the proposed tariffs could be accessed on

⁶ Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of A One-Year Surcredit* (Ky. PSC Sept. 24, 2021) at 60–61.

⁷ Case No. 2020-00350, *LG&E Certificate of Completed Notice* (LG&E Notice) (filed Jan. 12, 2021).

⁸ *Id.*, Attachment 2, at 3; and Exhibit B, at unnumbered page 2; see also LG&E Customer Notice of Rate Adjustment (filed Nov. 25, 2020) at 3.

LG&E's website.⁹ The webpage on LG&E's website also included an abbreviated customer notice that contained identical language to that outlined above.¹⁰

Mr. Ricketts explained that in reliance of the customer notices provided by LG&E, he decided to expand his solar generating facility before NMS I and new NMS II compensation rates were established, with an expected start-up date of October 31, 2021.¹¹ On April 19, 2021, Mr. Ricketts application was approved.¹² In a follow-up, Mr. Ricketts asked LG&E to clarify that his expansion would be covered under the NMS I tariff, and LG&E responded, stating: "If this installation is completed in Q3, the whole net metering (old and new) would be under the new guidelines. Everything must be installed and operational prior to effective change date."¹³

Mr. Ricketts averred that LG&E's position was not based upon language in its current Commission approved NMS tariff but was instead based upon LG&E's proposed NMS I/II tariff which was currently pending approval by the Commission in Case No 2020-00350.¹⁴ Further, Mr. Rickett's claimed that LG&E intended to unlawfully impose a "material change" test to divest electric generating facilities from the legacy rights established in KRS 278.466(6).¹⁵ Mr. Ricketts argued that: (1) interconnection matters related to the repair, replacement, or modification of a generating facility do not allow for

⁹ LG&E Notice at 2; Attachment 2, at 5; and Exhibit B, at unnumbered page 3.

¹⁰ <https://lge-ku.com/regulatory/2020/electronic-application-LGE-adjustment-electric-gas-rates>, - Public Notices – Abbreviated Newspaper Notice, at 3. (Accessed Dec 12. 2021)

¹¹ Complaint at 5, paragraph 11 and 12.

¹² Complaint, Exhibit 5 at 2-3.

¹³ *Id.* at 6, paragraph 14.

¹⁴ *Id.* at 6, paragraph 18.

¹⁵ *Id.* at 7, paragraph 19.

the termination of the legacy rights established in KRS 278.466(6),¹⁶ and (2) that LG&E's actions were unjust, unreasonable, unsafe, improper, inadequate and insufficient in regards to its adherence to KRS 278.466(6).¹⁷ Mr. Ricketts further argued that the lack of certainty regarding the effective date of a new net metering tariff, and the timing of approval(s), construction, and start-up of a new generating facility was leaving potential and existing customer generators, including himself, in a precarious position with no just, reasonable, proper, adequate, or sufficient way of determining what the costs and compensation rate may be guaranteed over the life of a generating facility.¹⁸

Mr. Ricketts sought the following relief:

1. The Commission to find and conclude that Mr. Ricketts established a *prima facie* case;
2. The Commission to find and conclude by Order that Mr. Ricketts and other similarly situated customer generators seeking to expand their generating facilities will maintain their legacy rights as long as that system does not exceed the 45 kW system size limit, established in KRS 278.465(2)(c);
3. The Commission to order LG&E to abide by the terms and conditions set by the Customer Notice(s) in which current or potential NMS customers have acted upon;
4. The Commission to order the Interconnection Application submission date to serve as the "in service" date for purposes of retaining legacy rights;

¹⁶ *Id.* at 7, paragraph 20.

¹⁷ *Id.* at 7, paragraph 22.

¹⁸ *Id.* at 9, paragraph 34.

5. All other relief to which Mr. Ricketts is entitled.¹⁹

DISCUSSION AND FINDINGS

On July 12, 2021, LG&E responded to Mr. Ricketts' Complaint and moved for the Commission to dismiss with or without prejudice.²⁰ LG&E disclosed that SES is a member of the Kentucky Solar Industries Association (KYSEIA), which was an active intervenor in Case Nos. 2020-00174 and 2020-00350 for NMS customers, and Mr. Ricketts was a former director of KYSEIA.²¹ Because of this, LG&E maintained that Mr. Ricketts has considerable knowledge of and experience with solar generation facilities and the laws governing them, and is a sophisticated consumer of net metering.²²

LG&E pointed out that Mr. Ricketts did not show that LG&E had refused or failed to serve Mr. Ricketts in accordance with LG&E's Rider NMS Tariff, but rather the relief he sought was preemptive and declaratory in nature.²³ While Mr. Ricketts had submitted his formal complaint prior to the final Order in Case No. 2020-00174,²⁴ LG&E correctly noted that the Commission has now decided upon the issues raised in this Complaint. In Case No. 2020-00174, the Commission addressed KYSEIA's request to clarify whether active, pending applications could take service under Kentucky Power Company's NMS I Tariff

¹⁹ *Id.* at 11.

²⁰ LG&E's Motion to Dismiss and Supporting Memorandum (filed July 12, 2021) at 1.

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.* at 4.

²⁴ Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; And (5) All Other Required Approvals and Relief* (Ky. PSC May 14, 2021).

prior to the final Order.²⁵ The Commission found that “the eligible generating facility must be in service prior to the effective date of the Commission’s approval of NMS II in order for the eligible customer-generator to be eligible to take service under NMS I.”²⁶ In regards to material changes to a legacy eligible generating facility, the Commission found that “any modification or installation that materially increases the capacity of an eligible generating facility should be evaluated on the same basis as any other new application.”²⁷

On July 16, 2021, Mr. Ricketts filed a response to LG&E’s motion to dismiss.²⁸ Mr. Ricketts stated that the Orders in Case Nos. 2020-00174 and 2020-00350, and the Commission’s approval of NMS compensation rates on September 24, 2021, rendered his Complaint in part moot and in part unripe.²⁹ Mr. Ricketts moved that the Complaint be dismissed without prejudice.³⁰

Based on the foregoing and in light of Mr. Rickett’s request, the Commission finds the complaint is premature and should be dismissed without prejudice.

IT IS THEREFORE ORDERED that this proceeding is dismissed without prejudice and is removed from the Commission's docket.

²⁵ *Id.* at 18 and 44–46.

²⁶ *Id.*

²⁷ *Id.* at 43-44.

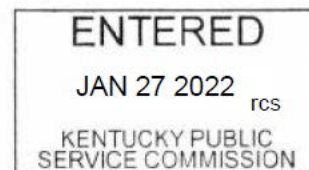
²⁸ Steve Ricketts’ Response to Motion to Dismiss (filed July 16, 2021).

²⁹ *Id.* at 2.

³⁰ *Id.*

By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



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