

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	CASE NO.
KENTUCKY, INC. FOR AN ADJUSTMENT TO)	2023-00413
RIDER NM RATES AND FOR TARIFF APPROVAL)	

ORDER

On October 31, 2024, Kentucky Solar Energy Society and Kentuckians for the Commonwealth (collectively, Joint Intervenors) filed a petition for rehearing, pursuant to KRS 278.400, regarding Duke Energy Kentucky, Inc's (Duke Kentucky) Net Metering Tariffs. Specifically, Joint Intervenors asked the Commission to more clearly define the avoided costs that compose the bill credits; requested consideration of changes to certain specific components of those avoided costs; and to reconsider the approved methodology of calculating the amount of energy Rider Net Metering II (Rider NM-2) customers will receive.¹ On November 4, 2024, Kentucky Solar Industries Association, Inc (KYSEIA) filed a response to Joint Intervenors' petition supporting Joint Intervenors' petition. On November 7, 2024, Duke Kentucky also filed a response to Joint Intervenors' petition for rehearing.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing 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

¹ Joint Intervenors' Petition for Rehearing (filed Oct. 31, 2024) at 1.

unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”² An order can only be unlawful if it violates a state or federal statute or constitutional provision.³

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.

PETITION

Explanation of Components of Bill Credit

Joint Intervenors requested that the Commission more clearly define the avoided costs that compose the “bill credit” in the October 11, 2024 Order and asked for explanation of each of the avoided costs that they argue is required to be considered.⁴ Joint Intervenors argued that the Commission’s October 11, 2024 Order varies from past precedent⁵ in how it presents the costs that it approved as part of the ultimate “Excess Generation Avoided Cost Credit Rate” approved as reasonable in its Order.⁶ Joint Intervenors stated confusion that avoided transmission and distribution costs were in the

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

³ *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).

⁴ Joint Intervenors’ Petition for Rehearing at 4.

⁵ Joint Intervenors’ Petition for Rehearing at 4.

⁶ Joint Intervenors’ Petition for Rehearing at 4.

avoided capacity cost section.⁷ Joint Intervenors alleged that the Commission did not state what specific avoided costs were approved or incorporated into the avoided cost excess generation credit (ACEGC) rate.⁸ Joint Intervenors stated that there was no discussion of job benefits, and there was no further explanation related to avoided carbon costs.⁹

Value of Avoided Costs

Joint Intervenors asked the Commission to reconsider evidence in the record related to the avoided costs.¹⁰ For avoided capacity costs, Joint Intervenors stated that there does not appear to be an explanation for the Commission's departure from previous precedent¹¹ about utilizing public information and stated that the Order overlooked Joint Intervenors' expert witness who refuted Duke Kentucky's assertion that PJM's Net CONE was not representative.¹²

Next, in terms of avoided transmission costs, Joint Intervenors stated that the value of that cost is unclear in the Order.¹³ Joint Intervenors alleged that the Order does not address the contrary evidence provided by Joint Intervenors showing that the avoided transmission costs should be much higher, arguing for an avoided cost of 0.0174 per

⁷ Joint Intervenors' Petition for Rehearing at 4–5.

⁸ Joint Intervenors' Petition for Rehearing at 5.

⁹ Joint Intervenors' Petition for Rehearing at 5.

¹⁰ Joint Intervenors' Petition for Rehearing at 5.

¹¹ Joint Intervenors mention precedent in the petition at this point; however, the petition does not contain a cite for the two references.

¹² Joint Intervenors' Petition for Rehearing at 7.

¹³ Joint Intervenors' Petition for Rehearing at 8.

kilowatt-hour.¹⁴ For distribution costs, Joint Intervenors stated that the Order references the level of costs, but the value doesn't appear directly in Duke Kentucky witness, Bruce Sailer's rebuttal testimony.¹⁵ Joint Intervenors argued that avoided distribution costs should be set at a level proposed in Duke Kentucky's initial testimony and as supported by Joint Intervenor's expert.¹⁶

For avoided environmental costs, Joint Intervenors stated that the Commission's October 11, 2024, Order states "there is no need for any additional values for avoided environmental or carbon costs and in so far as Duke Kentucky excluded those costs, the credit rate calculation is reasonable," but offers no further explanation.¹⁷ Joint Intervenors pointed out that Duke Kentucky's witness, Matthew Kalemba, stated that avoided costs of additional required environmental compliance are not necessarily included in avoided capacity or energy costs.¹⁸ Joint Intervenors argued that, similarly, the Order also overlooks the possible avoided carbon costs, and that it is directly contrary to Commission

¹⁴ Joint Intervenors' Petition for Rehearing at 8.

¹⁵ Joint Intervenors' Petition for Rehearing at 9.

¹⁶ Joint Intervenors' Petition for Rehearing at 9.

¹⁷ Joint Intervenors' Petition for Rehearing at 9.

¹⁸ Joint Intervenors' Petition for Rehearing at 9.

precedent.¹⁹ Joint Intervenors argued that given the only avoided carbon cost offered into the record compliant with Commission precedent is that in Dr. McCann’s testimony, Joint Intervenors encourage the Commission to reconsider the omission of avoided carbon cost in the Order.²⁰ Joint Intervenors also again pointed out the lack of discussion for job benefits.²¹

Netting Methodology

Joint Intervenors asked the Commission to reconsider its position regarding netting, arguing that it departed from precedent²² requiring utilities “net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period,” as required by the plain language of KRS 278.465(4).²³ Joint Intervenors argued that Duke’s proposal is fundamentally not netting in any real sense of the word, but instead two-channel billing, allowing Duke Kentucky to charge one rate to its ratepayers and reimburse them a separate lower rate for the energy received by Duke Kentucky from those same

¹⁹ Joint Intervenors’ Petition for Rehearing at 10; 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), Order at 36; Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric 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), Order; and Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric 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), Order at 56.

²⁰ Joint Intervenors’ Petition for Rehearing at 11.

²¹ Joint Intervenors’ Petition for Rehearing at 11.

²² Joint Intervenors’ Petition for Rehearing citing Case No. 2020-00349, Sept. 24, 2021 Order at 48 and Case No. 2020-00350, Sept. 24, 2021 Order at 48.

²³ Joint Intervenors’ Petition for Rehearing at 12.

ratepayers.²⁴ Joint Intervenors discussed the Commission’s Order for rehearing in Case No 2020-00349²⁵ stating that “the Order on rehearing still required netting over the billing period as required by the statute, but acknowledged the change in the statute allowing excess generation of rooftop solar over a billing period may be compensated differently.”²⁶ Joint Intervenors argued that the inconsistency of Duke Kentucky’s proposed approach is highlighted in the Commission’s precedent that “because the energy charge is based upon electricity consumed, the energy charge and any riders that are based on a per kWh charge should be netted against energy exported pursuant to KRS 278.465(4).”²⁷ Joint Intervenors provided an example from Duke Kentucky’s response to the Attorney General’s First Request for Information, Item 1, that if a net metering ratepayer were to produce more power than they consumed in a given month (i.e., if “Solar Energy Consumed On-site” were set lower than “Solar Facility Production”), that same ratepayer would still be charged a \$/kWh charge for every single kWh consumed from the grid for Riders PSM, DSM, and FAC, despite having sent more power to the grid in a given month than they consumed.²⁸

KYSEIA RESPONSE

KYSEIA argued that it supports Joint Intervenors petition for rehearing because there are several instances in which the Commission failed to make findings of fact,

²⁴ Joint Intervenors’ Petition for Rehearing at 12.

²⁵ Case No. 2020-00349, Sept. 24, 2021 Order at 11–12.

²⁶ Joint Intervenors’ Petition for Rehearing at 13.

²⁷ Joint Intervenors’ Petition for Rehearing at 13 *citing* Case No. 2020-00349, Nov. 4, 2021 Order at 11–12 and Case No. 2020-00350, Nov. 4, 2021 Order at 11-12..

²⁸ Joint Intervenors’ Petition for Rehearing at 14.

conclusions of law, or explain changes in Commission precedent for determining and documenting the components for net metering export rates, particularly with regard to transparency.²⁹ KYSEIA further agreed that the October 11, 2024 Order is inconsistent with statute and departs from Commission precedent concerning the netting of energy exports and imports over the billing period.³⁰ Lastly, KYSEIA adopted and incorporated by reference Joint Intervenors' petition and requested the Commission to grant rehearing for the matters identified in the petition.³¹

DUKE KENTUCKY'S RESPONSE

Duke Kentucky stated that Joint Intervenors have the burden of establishing one of the elements set out in KRS 278.400, and if it fails to do so, rehearing must be denied.³²

Duke Kentucky first argued that the Commission should deny rehearing on all issues related to components of the ACEGC.³³ Duke Kentucky pointed out that the Commission did not accept its calculation but replaced a portion of Duke Kentucky's calculation with a higher set of values from a post-hearing data request.³⁴ Duke Kentucky also pointed out its obligation to file another net metering application at the conclusion of its 2024 IRP filing.³⁵ Duke Kentucky noted that the referenced value for avoided

²⁹ KYSEIA's Response to the Petition for Rehearing of Joint Intervenors (KYSEIA's Response) (filed Nov. 4, 2024) at 1.

³⁰ KYSEIA's Response at 1.

³¹ KYSEIA's Response at 2.

³² Duke Kentucky's Response to Joint Intervenors Petition for Rehearing (Duke Kentucky's Response) (filed Nov. 7, 2024) at 2–3.

³³ Duke Kentucky's Response at 3.

³⁴ Duke Kentucky's Response at 3.

³⁵ Duke Kentucky's Response at 4.

transmission and distribution costs are included in Bruce Sailer's rebuttal testimony.³⁶ Duke Kentucky additionally stated that the Commission did provide explanation as it relates to avoided environmental and carbon costs.³⁷ For carbon costs, Duke Kentucky stated that there is no direct precedent requiring carbon costs to be calculated separately.³⁸ For job benefits, Duke Kentucky stated that Joint Intervenors' witness did not assign a specific amount of avoided costs per kWh for job benefits, and given the record, the Commission declining to order such an analysis was reasonable.³⁹

Duke Kentucky next argued that the Commission should deny rehearing on netting methodology stating that the Commission has already considered and rejected Joint Intervenors' reading of both the statute and its prior orders, and that Joint Intervenors are seeking to relitigate their original arguments.⁴⁰

DISCUSSION AND FINDINGS

As an initial matter, the Commission's October 11, 2024, Order did not contain an explicit effective date. On October 31, 2024, Duke Kentucky filed its proposed net metering tariffs with an effective date of January 1, 2025. The Commission finds that this effective date is reasonable.

Having considered Joint Intervenors' petition and being otherwise sufficiently advised, the Commission finds that the petition should be denied for the reasons set forth below.

³⁶ Duke Kentucky's Response at 4–5.

³⁷ Duke Kentucky's Response at 6.

³⁸ Duke Kentucky's Response at 7.

³⁹ Duke Kentucky's Response at 7–8.

⁴⁰ Duke Kentucky's Response at 9.

Explanation of Components of Bill Credit

The Commission notes that in its October 11, 2024 final Order, several components of the bill credits were modified, but overall, accepted, such as the CAPEX cost of a combustion turbine (CT), the Effective Load Carrying Capability values, adjustments to the fixed Operating and Maintenance (O&M) of a CT, and the avoided transmission and distribution costs.⁴¹ The Commission accepted the CAPEX cost of a CT, the avoided transmission and distribution costs, and the ancillary services as proposed by Duke Kentucky in Bruce Sailers Rebuttal Testimony, Confidential Rebuttal Attachment BLS-1.⁴² However, as noted in the October 11, 2024 final Order,⁴³ the Commission adjusted the 2023 fixed O&M, considering the costs were significantly lower than what was publicly available. Overall, the Commission accepted the residential and non-residential rate calculations that included all avoided capacity, avoided transmission and distribution, and avoided environmental costs as proposed by Duke Kentucky in Confidential Rebuttal Attachment BLS-1.

Value of Avoided Costs

The Joint Intervenors raised several issues related to the avoided costs. However, in doing so, the Commission notes that the Joint Intervenors failed to provide an example of new evidence, nor were the issues raised the result of an error or omission. The Commission addressed the requests within Duke Kentucky's application. As to the issue of jobs or carbon costs being factored into the avoided capacity costs, the Commission

⁴¹ Order (Ky. PSC Oct. 11, 2024) at 29–33.

⁴² Order (Ky. PSC Oct. 11, 2024) at 29–33. See Bruce Sailers Rebuttal Testimony, Confidential Rebuttal Attachment BLS-1 (filed Apr. 17, 2024).

⁴³ Order (Ky. PSC Oct. 11, 2024) at 31.

reminds the Joint Intervenors that they actually have the burden to provide sufficient evidence that their proposal is reasonable and should be approved by the Commission. The Commission notes that, although the Joint Intervenors provided testimony, the information in the record was rebutted by Duke Kentucky, and the Commission found that the avoided capacity cost calculation should not include the carbon costs or job benefits. The Commission reiterates that parties should calculate avoided capacity costs using public information so that the costs are quantifiable by the public. As noted in its response, Duke Kentucky has an obligation to file a new application using updated and publicly available information after its Integrated Resource Plan has been reviewed by the Commission.

Netting Methodology

The Commission finds that the Joint Intervenors' petition for rehearing regarding the netting methodology failed to meet the standards laid out in KRS 278.400. The Joint Intervenors did not introduce any new evidence not readily discoverable at the time of the original hearing. Accordingly, the Commission reviewed the claims in the Joint Intervenors' petition in terms of the remaining factors set forth in KRS 278.400—whether material errors or omissions were made and whether the findings were unreasonable or unlawful.

Prior to the change to the net metering statutes that took effect on January 1, 2020, KRS 278.465(4) defined net metering as “measuring 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.” Effective January 1, 2020, KRS 278.465(4) was revised to define net metering “as the difference between the

(a) dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period and priced as prescribed in KRS 278.466; and (b) dollar value of all electricity consumed by the eligible customer-generator over the same billing period and priced using the applicable tariff of the retail electric supplier.” In addition, KRS 278.466(6) was revised effective January 1, 2020, to reflect that customer-generators that were in service prior to the effective date of the initial net metering order by the Commission after January 1, 2020, would be allowed to continue taking service under the net metering tariff provisions in place when the customer-generator began taking net metering service, including the 1:1 kWh denominated energy credit for electricity fed back to the grid, for a period of 25 years.

The Joint Intervenors argued that Rider NM-2 customer-generators should still get the one-to-one (1:1) kWh credit up to the amount of kWh Duke Kentucky delivers to the customer, with any excess kWh delivered by the customer-generator to Duke Kentucky taking the form of a dollar-denominated credit.⁴⁴ However, the net metering statute does not state anywhere that a Rider NM-2 customer-generator is entitled to the same 1:1 kWh denominated energy credit as those customer-generators served under Rider NM-1. Furthermore, it is clear by the changes made to the net metering statute effective January 1, 2020, that the 1:1 kWh credit would not continue for customer-generators taking service under a new, proposed net-metering tariff, in this case, Rider NM-2. Duke Kentucky is statutorily required to calculate Rider NM-2 bills by netting the dollar value of all electricity generated by an eligible customer-generator fed back to the grid over a billing period priced at the Commission approved rate and the dollar value of all electricity consumed

⁴⁴ Joint Intervenors’ Petition for Rehearing at 15.

by the eligible customer-generator over the same period at the tariff rate. Therefore, the Commission's findings were neither unreasonable or unlawful and no material errors or omissions were made.

As to the Joint Intervenors' argument that past Commission precedent favors their interpretation for how net metering bills should be calculated, the Commission addressed and rejected this argument in the October 11, 2024 Order.⁴⁵ As Duke Kentucky's proposed netting methodology matched that of other utilities, the Commission found it to be reasonable.

The Commission finds that the Joint Intervenors' motion regarding the netting methodology should be denied because it failed to establish the existence of new evidence not readily discoverable at the time of the original hearings, material errors or omissions in the October 11, 2024 final Order, or that the October 11, 2024 final Order is unreasonable or unlawful.

IT IS THEREFORE ORDERED that:

1. The effective date for Duke Kentucky's updated Rider NM-1 and NM-2 shall be January 1, 2025.
2. Joint Intervenors' petition for rehearing is denied.
3. This case is closed and removed from the Commission's docket.

⁴⁵ Order (Ky. PSC Oct. 11, 2024) at 41.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:



Executive Director



Case No. 2023-00413

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