

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**ELECTRONIC CONSIDERATION)
OF THE IMPLEMENTATION OF) CASE NO. 2019-00256
THE NET METERING ACT)**

**COMMENTS OF
KENTUCKY ASSOCIATION OF ELECTRIC COOPERATIVES, INC.**

Kentucky Association of Electric Cooperatives, Inc. (“the Kentucky Electric Cooperatives”), by counsel and pursuant to the Commission’s Orders entered July 30 and September 5, 2019, in the above-captioned matter (the “Orders”), respectfully submits the following comments for consideration by the Commission regarding implementation of Senate Bill 100, An Act Related to Net Metering (“Net Metering Act”), which takes effect on January 1, 2020.

I. INTRODUCTION

As the statewide association representing the interests of Kentucky’s electric cooperatives,¹ the Kentucky Electric Cooperatives appreciate the Commission’s proactive efforts to develop a record in this proceeding which may guide and inform implementation of the Net Metering Act as it applies to individual utilities. The penetration of rooftop solar and other renewable self-supply alternatives, in particular within residential rate classes, continues to grow

¹ The membership of the Kentucky Electric Cooperatives includes the following jurisdictional utilities: Big Rivers Electric Corporation; Big Sandy RECC; Blue Grass Energy Cooperative Corporation; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; East Kentucky Power Cooperative, Inc.; Farmers RECC; Fleming-Mason Energy Cooperative; Grayson RECC; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenegy Corporation; Licking Valley RECC; Meade County RECC; Nolin RECC; Owen Electric Cooperative; Salt River Electric Cooperative Corporation; Shelby Energy Cooperative, Inc.; South Kentucky RECC; and Taylor County RECC. These comments reflect the views of the association and do not necessarily represent the views of each individual member. These comments are not intended to bind any of the foregoing members in any future docket.

around the country, and providing increased certainty regarding equitable compensation and other issues related to net metering will benefit both customers and utilities. Indeed, rate certainty permits better decision-making and encourages efficient infrastructure investment by providing individual consumers more confidence in their pay-back period investment calculations.²

A sound approach to net metering compensation must also support the statutory principles that ensure utilities receive fair, just and reasonable rates for the services they provide; further, it must employ suitable and reasonable classifications of service, rates, and customers consistent with law.³ When the Kentucky General Assembly enacted the Net Metering Act, it sought to address an imbalance or inequity existing under the prevailing net metering regime, particularly with respect to subsidization of costs.⁴ For these reasons and others, the Commission's authoritative role in implementing the Net Metering Act on a utility-by-utility basis is exceedingly important. And thus, the Kentucky Electric Cooperatives support and appreciate the Commission's compilation of comments from thoughtful contributors as part of this proceeding.

II. DISCUSSION

As the Commission noted in its Order establishing this proceeding, net metering has been redefined by the Net Metering Act as the difference between: (a) the dollar value of all electricity

² The "pay-back" period is the number of years it would take for the cumulative electric bill savings from an investment in rooftop solar to equal the cost of the investment.

³ See generally KRS 278.030.

⁴ See KRS 278.466(5), as amended by the Net Metering Act and effective January 1, 2020 ("Using the ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve it eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators.").

generated by an eligible customer-generator that is fed back to the electric grid over a billing period at prices established by the Commission through the ratemaking process (the compensation rate); and (b) the dollar value of all electricity consumed by the eligible customer-generator over the same billing period that is priced under a retail electric utility's tariff rate.⁵ The Net Metering Act requires the Commission to establish the compensation rate during a ratemaking proceeding initiated by a retail electric utility, or a generation and transmission cooperative on behalf of one or more retail electric utilities.

At the outset, and consistent with the Commission's long-standing approach when determining fair, just and reasonable rates,⁶ it should be recognized that fundamental principles of utility ratemaking preclude a "one size fits all" solution for the implementation of Kentucky's new net metering framework. As the Net Metering Act makes clear, the establishment of appropriate net metering compensation rates requires the Commission's evaluation of utility-specific circumstances as presented and developed during a ratemaking proceeding. Recognizing that differences exist between electric cooperatives and investor-owned utilities ("IOUs"), as well as between cooperatives themselves, is imperative to ensuring a fair and reasoned approach to net metering implementation.⁷ Flexibility should be afforded to each

⁵ See Order, p. 1, Case No. 2019-00256 (Ky. P.S.C. July 30, 2019). The current version of the relevant statute, KRS 278.465(4), defines 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." The net metering tariff schedules presently in place at utilities throughout Kentucky reflect this outgoing framework (and other, soon-to-be-former provisions of KRS 278.465, *et seq.*).

⁶ See, e.g., 807 KAR 5:001, Section 16 (detailing the extensive, utility-specific information required to support an application for a general adjustment of rates).

⁷ Of course, electric cooperatives differ from IOUs in a number of ways, and the ratemaking procedures reflect some of those differences. See, e.g., KRS 278.455 (providing for wholesale flow-through rate filings); Case No. 2018-00407, *A Review of the Rate Case Procedure for Electric Distribution Cooperatives* (Ky. P.S.C. March 26, 2019). For example, distribution cooperatives provide the distribution function themselves but purchase the power supply and transmission functions from wholesale G&Ts; the vertically-integrated IOUs, however, provide all three functions within a single rate construct. The penetration of net metering may also differ between urban and rural areas, which can influence the number of affected customers and the extent of net metering compensation's impact on the utility's overall financial

utility when adjusting net metering compensation rates for a particular utility's ratepayers.

A. The Commission Should Permit Utilities to Use QF Rates as the Compensation Rate for Net Metering.

The concepts behind net metering are not new. Customers in Kentucky and other states have embraced self-supply technologies for many years, and several options presently exist for properly addressing customer self-supply in utility rates. The matter arose most prominently with the passage of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), which—among other things—encouraged the development and proliferation of distributed generation resources within the traditional regulatory framework of vertically integrated utilities. Under PURPA, QFs have the right to sell energy and capacity to a utility,⁸ and with limited exceptions, QFs have the option of selling to a utility either at the utility's avoided cost or at a negotiated rate.⁹ PURPA has also adapted to changes in the electric markets; utilities participating in regional transmission organizations ("RTOs"), for example, may be declared exempt from mandatory PURPA purchase obligations for generators exceeding 20 megawatts,¹⁰ and capacity and energy values are now often measured by pricing signals provided directly by RTO markets.¹¹

condition.

⁸ See 18 C.F.R. § 304.

⁹ See 18 C.F.R. § 292.101(b)(6) (defining avoided cost as "the incremental cost to an electric utility of electric energy or capacity which, but for the purchase from the QF, such utility would generate itself or purchase from another source").

¹⁰ See, e.g., *In the Matter of East Kentucky Power Cooperative, Inc.*, Docket No. QM17-5-000, Order Granting Application to Terminate Mandatory Purchase Obligation (F.E.R.C. Sept. 7, 2017).

¹¹ See *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Issuance of a Certificate of Public Convenience and Necessity, Approval of Certain Assumption of Evidences of Indebtedness and Establishment of a Community Solar Tariff*, Order, Case No. 2016-00269, pp. 7-8 (Ky. P.S.C. Nov. 22, 2016). Notably, on September 19, 2019, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking ("NOPR") proposing, *inter alia*, to grant states the flexibility to require variability in energy rates paid to QFs based on a utility's avoided costs at the time the energy is delivered, as well as the flexibility to set "as-available" QF energy rates at the locational

At the state level, ratemaking for self-supply in the commercial and industrial sectors has been dealt with by the Commission through QF-applicable regulation¹² and tariff schedules¹³ setting forth compensation rates based on avoided cost calculations and the comparative characteristics of the generation facility. For instance, the Commission has approved QF tariffs with rates, terms and conditions that vary both with the size of the relevant resource and with whether or not the resource is dispatched by the utility.¹⁴ Eligible electric generating facilities under the Net Metering Act will resemble small QF resources (less than 100 kW) that are not dispatched by the utility.

The “avoided cost” approach embodied in the existing QF framework remains fundamentally sound today, not only for commercial and industrial resources but also for *any* resources that supply energy or capacity which, absent those resources, the utility would have to generate itself or purchase from a third party. For this reason, the decision by a utility to embrace its applicable QF rate as its net metering compensation rate presents both a reasonable

marginal price (“LMP”), at competitive prices from liquid market hubs, or calculated from a formula based on natural gas price indices and specified heat rates. *See* Docket Nos. RM19-15-000, AD16-16-000, 168 FERC par 61,284 (September 19, 2019). The NOPR reiterates the federal law requirement that QF rates be set at the utility’s avoided costs. *See* NOPR, at para. 34 (“Although the Commission is proposing to modify how the states are permitted to calculate avoided costs, it is not terminating the requirement that the states continue to calculate, and to set QF rates at, such avoided costs.”); *see also* 18 C.F.R. § 292.304(a)(2); *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128 (cross-referenced 10 FERC ¶ 61,150), *order on reh’g*, Order No. 69-A, FERC Stats. & Regs. ¶ 30,160 (1980) (cross-references at 11 FERC ¶ 61,166), *aff’d in part & vacated in part sub nom. Am. Elec. Power Serv. Corp. v. FERC*, 675 F. 2d 1226 (D.C. Cir. 1982), *rev’d in part sub nom. Am. Paper Inst. V. Am. Elec. Power Serv. Corp.*, 461 U.S. 402 (1983)).

¹² *See* 807 KAR 5:054.

¹³ The compensation for self-supply included in the approved QF tariffs for East Kentucky Power Cooperative, Inc. (“EKPC”) and Big Rivers Electric Corporation (“Big Rivers”) is based on avoided cost calculations, consistent with federal law and Commission regulation. The distribution cooperative members of EKPC and Big Rivers also have Commission-approved QF tariffs on file that mirror the respective EKPC or Big Rivers QF rate structure.

¹⁴ *See, e.g.,* Case No. 2017-00212, *Tariff Filing of East Kentucky Power Cooperative, Inc. and its Member Distribution Cooperatives for Approval of Proposed Changes to their Qualified Cogeneration and Small Power Production Facilities Tariffs and the Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities* (Ky. P.S.C. March 27, 2018) (“The Commission further finds that the proposed QF Tariffs addressing non-dispatchable generation sources is reasonable and should be approved because these QF Tariffs will apply to all intermittent cogeneration resources such that all non-firm resources are treated on an equal basis.”).

and expedient means of implementing the relevant requirements of the Net Metering Act. This does not necessarily preclude, however, a utility from taking other reasonable steps to address net metering compensation based upon that utility's unique circumstances.

B. The Commission Should Permit Utilities to Establish or Enhance Other Safety-Related Terms and Conditions of Service for Eligible Customer-Generators Pursuant to the Net Metering Act.

While matters of cost recovery and rate design are undoubtedly important when considering the topic of net metering, ensuring the availability of safe and reliable power is equally essential. The growth of photovoltaic (PV) solar systems installed on residential and commercial buildings presents new safety hazards to system owners, emergency first responders, and utility line workers. When exposed to light, a grid-tied PV solar system, for example, will generate direct current (DC) electricity that travels through wires and combiner boxes to an inverter that converts the energy to alternating current (AC) electricity. The inability to power-down PV solar panels exposed to sunlight creates potential safety concerns for utility workers and other parties. Consistent with KRS 278.466 (both prior to and following its amendment by the Net Metering Act), utilities should be permitted to establish any other terms and conditions that are consistent with the National Electric Safety Code or other accepted safety practices or guidelines ensuring the safe and reliable operation and maintenance of the electric grid or the safety of utility customers and employees.

III. CONCLUSION

The concept of compensating customer self-supply at the utility's avoided cost is sound and historically proven, and because the Commission has already reviewed and approved electric utility QF tariffs that are based on avoided costs, it is both reasonable and appropriate for a utility to adopt its QF rates as the initial compensation rate for net metering. However, a "one size fits

all” approach to net metering should be avoided because, as the Net Metering Act makes clear, the establishment of appropriate net metering compensation rates requires the Commission’s evaluation of utility-specific circumstances as presented and developed during a ratemaking proceeding. The General Assembly’s action also makes it clear that net metering customers should not continue to benefit from rate subsidies at the expense of non-net metering customers. Finally, utilities should be permitted to establish other terms and conditions for service for eligible customer generators pursuant to the Net Metering Act, particularly those requirements that promote the safe and reliable operation and maintenance of the electric grid or the safety of utility customers and employees alike.

This the 15th day of October, 2019.

Respectfully submitted,

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