

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL'S COMMENTS**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby provides his Comments in the above-styled matter. The Commission’s initiating order notes that it is seeking comments from interested stakeholders to consider in implementing its obligations under the “Net Metering Act.”<sup>1</sup> The Attorney General provides the following Comments for the Commission’s consideration with the understanding that they will be “incorporated by reference into any ratemaking proceedings initiated by retail electric utilities pursuant to the Net Metering Act.”<sup>2</sup>

Although the amended Net Metering Act permits utilities to seek usage rates for eligible customer-generators “without regard for the rate structure for customers who are not eligible customer-generators,”<sup>3</sup> the Attorney General’s Comments focus on the compensation rate portion of the act. The only direction given to the Commission regarding the actual compensation rate under the Net Metering Act is that it “shall be set by the commission using the ratemaking processes under this chapter.”<sup>4</sup> Pursuant to the ratemaking processes under KRS Chapter 278, any utility initiating a proceeding before this Commission under the Net

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<sup>1</sup> Case No. 2019-00256, Order (Ky. Commission Jul. 30, 2019) at 1.  
<sup>2</sup> *Id.*  
<sup>3</sup> KRS 278.466 (5) (Effective January 1, 2020).  
<sup>4</sup> KRS 278.466 (3) (Effective January 1, 2020).

Metering Act has the burden of proof to demonstrate that the rate is just and reasonable.<sup>5</sup> The Commission has previously held that except when an intervenor “advances proposal in areas or on issues” that the utility did not address in its application, the intervenor “has no burden of proof to meet.”<sup>6</sup> Insofar as intervenors do not advance proposals beyond the rates sought pursuant to the Net Metering Act in these initial proceedings, they bear no burden of proof. However, the Commission’s proceedings under the Net Metering Act should nevertheless afford all parties the opportunity to present any relevant data, information or arguments they see fit.

The Legislature’s charge to the Commission regarding the compensation rate for eligible customer-generators is silent as to the cost and benefits the Commission may consider.<sup>7</sup> As such, the Commission’s approach to considering data and arguments should be broad and generous. There has always been an asymmetry of information between utilities and everyone else, including regulators. Utilities have under their exclusive control metering data, line loss figures, and all of the other utility-specific information relevant to the proceedings under the Net Metering Act. In order to effectively, and efficiently, determine an appropriate compensation rate, the Commission should continue its policy of a liberal discovery process and afford the full procedural schedule ordinarily used in rate proceedings. In regards to discovery and its own decision making, *at a minimum* the Commission should allow and consider all information related to costs and benefits previously described by Louisville Gas and Electric and Kentucky Utilities (“LG&E/KU”) as “Commission-

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<sup>5</sup> KRS 278.190; *see also* KRS 278.030.

<sup>6</sup> In *Re. Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2004-00103, Order (Ky. Commission Oct. 27, 2004) at 2.

<sup>7</sup> *See* KRS 278.466 (Effective January 1, 2020), generally.

jurisdictional.”<sup>8</sup> As discussed by LG&E/KU, those “Commission-jurisdictional costs and benefits” are those that would or could “affect utility rates or service under existing or reasonably foreseeable regulatory requirements.”<sup>9</sup> For instance, costs and benefits considered in Integrated Resource Plans include carbon dioxide prices, fuel prices, generating unit operating lives, reliability costs in the context of reserve margin, environmental regulations like coal ash handling, capacity constraints, transmission constraints, and transmission and distribution line losses.<sup>10</sup> If these are the types of costs and benefits electric utilities consider in their resource planning, then they are an appropriate consideration when determining the proper compensation rate for distributed resources.

Finally, the Attorney General warns against the Commission creating a rigid framework or methodology to apply in determining the compensation rate amongst utilities. Initially, the fact that the Net Metering Act allows for generation and transmission (“G&T”) cooperatives to initiate a proceeding to determine the compensation rate for “one (1) or more retail electric suppliers”<sup>11</sup> means that a one-size-fits-all model will not work. As the Commission is aware, G&Ts do not perform the distribution function that vertically integrated electric utilities do. The Attorney General understands that a number of costs and benefits associated with the resources of eligible customer-generators relate to the production function

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<sup>8</sup> In Re. *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky utilities Company for Review, Modification, and Continuation of Certain Existing Demand-Side Management and Energy Efficiency Programs*, Reply Brief of Louisville Gas and Electric Company and Kentucky Utilities Company (Ky. Commission Jul. 9, 2018) at 4.

<sup>9</sup> *Id.*

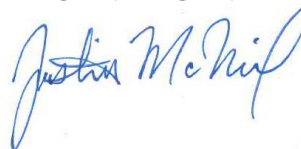
<sup>10</sup> See In Re. *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348; In Re. *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, Case No. 2018-00195; In Re. *2018 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2017-000384; In Re. *Electronic 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2019-00096; In Re. *Electronic 2016 Integrated Resource Report of Kentucky Power Company to the Public Service Commission of Kentucky*, Case No. 2016-00413.

<sup>11</sup> KRS 278.466 (3) (Effective January 1, 2020).

of electric utilities, but he also assumes numerous proposed costs and benefits will be distribution-related. Furthermore, with the rapid progression of technology, and varying levels of implementation amongst utilities in the Commonwealth, it would be unreasonable to determine a rigid framework or methodology for the compensation rate that ignores costs and benefits that are data dependent for which only some utilities currently possess or that all utilities will have in the near future. For instance, not all utilities in Kentucky have “smart meters,” which allow for granular data collection of end-users, or technology at the distribution-level that also provides more detailed information relevant to the compensation rate of eligible customer-generators. Providing an opportunity for the compensation rate to change on a case-by-case basis, based on future data that supports additional types or levels of costs and benefits, is a more reasonable approach than a rigid framework where the utility merely inputs data that stakeholders and the Commission are unable to assess or propose modifications to.

Respectfully submitted,

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ATTORNEY GENERAL



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