

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY	)	2020-00174
ASSETS AND LIABILITIES; (4) APPROVAL OF	)	
A CERTIFICATE OF PUBLIC CONVENIENCE	)	
AND NECESSITY; AND (5) ALL OTHER	)	
REQUIRED APPROVALS AND RELIEF	)	

**KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.  
RESPONSE TO KENTUCKY POWER COMPANYS'  
MOTION FOR REHEARING**

Comes now the Kentucky Solar Industries Association, Inc. (KYSEIA), by and through counsel, and files this Response to Kentucky Power Company's (KPC and Company) Motion for Rehearing. The Commission should deny Kentucky Power Company's rehearing request for the Commission to amend the January 13, 2021, Order with respect to the proposed Net Metering Service (NMS II) tariff rates.<sup>1</sup>

**ARGUMENT**

The January 13, 2021, Order, in pertinent part, *defers* a decision regarding Kentucky Power Company's proposal to close its current Net Metering Service (NMS I)

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<sup>1</sup> KYSEIA notes that Kentucky Power Company seeks rehearing on a somewhat exhaustive set of issues regarding the Commission's January 13, 2021, Order. KYSEIA limits its response to the request as it pertains to net metering. Lack of comment on other issues by KYSEIA should not be construed as agreement to any other portion of the Company's request for rehearing.

tariff and thereafter replace it with the proposed Net Metering Service (NMS II) tariff.<sup>2</sup> Pursuant to KRS 278.190(3), the Commission has 10 months after the filing of the schedule to decide the matter. The Company fails to identify any statutory provision through which the Commission was required to render a decision on NMS II on January 13, 2021. The Commission's action of deferring a decision on the proposal is wholly within the Commission's discretion. There is no reason for the Commission to rehear a decision on net metering that it is not yet a final decision.

Kentucky Power Company's argument lectures the Commission regarding the fact that the Company has an inordinately high opinion of its own evidence. Therefore, per the Company's unremarkable point of view, the Commission should have rendered a decision accepting the Company's proposal on net metering service as part of its January 13, 2021. KRS 278.190(3) assigns the burden the proof to the applicant. The Commission, as trier of fact and regarding the proposed NMS II, made the following finding: "The Commission is not convinced by Kentucky Power's arguments that avoided costs should be the basis for establishing new net metering rates."<sup>3</sup>

The Company did not demonstrate that its evidence was sufficient.<sup>4</sup> Kentucky Power Company has yet to meet its burden of proof. It is not necessary for KYSEIA, the

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<sup>2</sup> Order (Ky. PSC Jan. 13, 2021), pages 85; 114 (Ordering paragraphs 28, 29, and 30); and 115 (Ordering paragraph 38).

<sup>3</sup> *Id.* at 85.

<sup>4</sup> *Id.*

Commission, or anyone else to prove that KPC's proposal is inappropriate.<sup>5</sup> The Commission would have been acting well within its jurisdiction, and wholly consistent with statute, case law authority, and Commission precedent, to have simply denied Kentucky Power Company's net metering proposal without any further proceedings. Nothing in Senate Bill 100<sup>6</sup> renders the Company's insufficient evidence any less consequential.

The Commission's January 13, 2021, Order, in a cogent manner, explains its concerns regarding Kentucky Power Company's net metering proposal and the evidence, both submitted with and omitted from the proposal. Deferring a decision to allow additional proceedings is well within the express statutory authority of the Commission and reasonable in the instant case.<sup>7</sup> Kentucky Power Company fails to demonstrate any error or reason for rehearing the Commission's deferral of a decision so that it can conduct additional proceedings within the statutorily permissible period for making the decision.

The Company, arguing in the alternative, instructs the Commission to specify the study or evidence the Commission "believes" is required.<sup>8</sup> Kentucky Power Company either ignores or misses the obvious point, the Company has the burden of proof. The

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<sup>5</sup> See Case No. 8836, *Notice of Adjustment of Rates of Kentucky-American Water Company*, (Ky. PSC December 20, 1983), Order at page 9; *Energy Regulatory Commission v. Kentucky Power*, 605 S.W.2d 46, 50 (Ky. App. 1980).

<sup>6</sup> 2019 Ky. Acts ch. 101 ("Senate Bill 100").

<sup>7</sup> While KYSEIA recognizes the Commission's authority to defer this decision, KYSEIA notes the Commission's also had the authority to deny KPC's proposed NMS II tariff in light of KPC's failure to "convince" the Commission and carry its burden of proof. In this instance, additional proceedings to create a more thorough record on the net metering issue and permit review by the Commission's net metering consultant are beneficial, and KYSEIA believes it is prudent to move forward with the additional proceedings.

<sup>8</sup> Motion for Kentucky Power Company for Rehearing (Feb. 1, 2021) page 44.

January 13, 2021, Order expressly explains the evidentiary problems. The Commission is not required to further manage the Company's evidence for supporting the application.

WHEREFORE, KYSEIA respectfully requests the Commission deny Kentucky Power Company's Motion for Rehearing on this point.

Respectfully submitted,

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#### **NOTICE AND CERTIFICATION FOR FILING**

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 5<sup>th</sup> day of February 2021, and further certifies that the electronic version of the paper is a true and accurate copy of each paper filed in paper medium. Pursuant to the Commission's March 16, 2020, and March 24, 2020, Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, the paper, in paper medium, will be filed at the Commission's offices within 30 days of the lifting of the state of emergency.

/s/ David E. Spenard

David E. Spenard

#### **NOTICE REGARDING SERVICE**

The Commission has not yet excused any party from electronic filing procedures for this case.

/s/ David E. Spenard

David E. Spenard