

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.**

**POST-HEARING BRIEF**

Comes now the Kentucky Solar Industries Association, Inc. (KYSEIA), by and through counsel, and tenders its post-hearing Brief in the instant case. KYSEIA states the following:

**TABLE OF CONTENTS**

**INTRODUCTION AND STATEMENT OF THE CASE**.....1

**ARGUMENT**.....3

I. KENTUCKY POWER COMPANY’S NET METERING COMPENSATION RATE PROPOSAL IS IMMATERIAL AND DOES NOT WARRANT OR REQUIRE ACTION. CONSISTENT WITH THE NORMAL RATEMAKING PROCESS OF KRS CHAPTER 278, IT SHOULD BE DENIED.....3

II. KENTUCKY POWER COMPANY FAILS TO MEET ITS BURDEN OF PROOF REQUIRED FOR COMMISSION APPROVAL OF ITS PROPOSED RATE TO BE USED FOR COMPENSATING ELECTRICITY FED INTO THE GRID BY CUSTOMERS WITH ELIGIBLE ELECTRIC GENERATING FACILITIES.....9

    1. KRS Chapter 278 assigns the burden of proof for any change in the rate for compensating electricity fed into the grid by customers with eligible electric generating facilities to the applicant that initiates a proceeding pursuant to KRS 278.466(3).....9

    2. Kentucky Power Company fails to meet its burden of proof that its proposed new rate for compensation is just and reasonable. Accordingly, the proposed rate should be denied.....12

III. KENTUCKY POWER COMPANY FAILS TO MEET ITS BURDEN OF PROOF REQUIRED FOR COMMISSION APPROVAL OF ITS PROPOSED N.M.S. II TARIFF.....15

IV. KENTUCKY POWER COMPANY’S VARIOUS RECRIMINATIONS AND RATIONALIZATIONS ARE MERITLESS.....19

V. THE COMMISSION SHOULD REJECT KENTUCKY POWER’S PROPOSED COGEN/SPP TARIFFS AND REQUIRE TARIFFS THAT PROVIDE CLARITY, ALLOW FOR FINANCIAL STABILITY, AND THAT ARE BASED ON REASONABLE AND RELIABLE CALCULATIONS.....24

    1. The COGEN/SPP Tariffs Should Be Modified to Allow QFs to Seek a Contract with Pricing Based on Rates at the Time of the Establishment of a LEO, that Specifies the Length of Time that a QF May Provide Energy and Capacity Under a Locked-In Rate, and the Duration of that Locked-In Rate Should be at Least Ten Years.....26

i.	The COGEN/SPP Tariff Should Specify that A QF can Receive Rates Based on the Time a LEO Is Established.....	27
ii.	The Commission Should Require Kentucky Power to Offer Long Term Contracts to QFs.....	28
2.	Kentucky Power Has Failed to Utilize Reasonable and Reliable Avoided Capacity Costs Calculations.....	29
<u>CONCLUSION</u> .....		31

## INTRODUCTION AND STATEMENT OF THE CASE

On June 29, 2020, Kentucky Power Company (also: Company and KPC) tendered an electronic application seeking: A general adjustment of its rates for electric service; approval of tariffs and riders; approval of accounting practices to establish regulatory assets and liabilities; approval of a certificate of public convenience and necessity; and all other required approvals and relief.<sup>1</sup> By an Order entered on July 14, 2020, the Commission deemed the Application filed on July 15, 2020, found that an investigation of the proposed rates was necessary, suspended the effective date of the proposed rates for five months, up to and including January 13, 2021, and established a procedural schedule for reviewing the reasonableness of the proposed rates.<sup>2</sup>

Kentucky Power Company provides retail electric service to approximately 165,000 customers in all or portions of twenty (20) Kentucky counties.<sup>3</sup> As of the end of the test period (the twelve months ending March 31, 2020),<sup>4</sup> the Company had 36 residential customers taking net metering service and ten (10) industrial customers taking net metering service.<sup>5</sup> Thus, approximately 0.028 percent (.00028) of the Company's retail customers take service under the Company's net metering tariff (Tariff N.M.S. Also: N.M.S.I). Kentucky Power Company accurately characterizes the impact of the current

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<sup>1</sup> Application (as tendered June 29, 2020), Section 1, page 1 [PDF 1 of 24].

<sup>2</sup> Order (Ky. PSC July 14, 2020), pages 2 and 3.

<sup>3</sup> Application (as tendered June 29, 2020), Section 1, page 2 [PDF 2 of 24].

<sup>4</sup> *Id.*, page 7 [PDF 7 of 240].

<sup>5</sup> VR: 11/23/2020; 11:18:03 to 11:18:14; TE Vol. V, (Vaughn), page 1313 [PDF 1564 of 2028]; also see KPC Response to Staff's Fourth Request for Information (filed Aug. 26, 2020), 4-82(a) [PDF 162 of 238].

rate for compensation through its existing Tariff N.M.S I as “negligible” or “minimal.”<sup>6</sup> Per the Company, the financial impact is not material.<sup>7</sup>

Through a timely-filed motion to intervene, Kentucky Solar Industries Association, Inc. (KYSEIA), through counsel, moved for leave to intervene into the instant case.<sup>8</sup> Among other things, KYSEIA promotes the exchange of knowledge for solar energy and advocates on behalf of solar energy constituents and its members.<sup>9</sup> KYSEIA’s special and district interest on behalf of its members and also on behalf of itself as a solar association that represents solar companies that must disseminate information and calculate costs and rates of return based upon Kentucky Power Company’s net metering tariff (Tariff N.M.S. Also: N.M.S. I) and interconnection of systems.<sup>10</sup> In addition to Matt Partymiller, President of KYSEIA, three (3) other members of KYSEIA have also participated in this proceeding: Artie Ann Bates, Appalshop, Inc., and Annie’s Frugal Finery, LLC.<sup>11</sup> By an Order entered July 15, 2020, the Commission granted KYSEIA’s motion to intervene.<sup>12</sup>

Prior to the evidentiary hearing, KYSEIA, among other things, propounded two (2) requests for information to Kentucky Power Company,<sup>13</sup> pre-filed testimony of three (3)

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<sup>6</sup> VR: 11/23/2020; 11:21:54 to 11:22:15; TE Vol. V, (Vaughn), page 1316 [PDF 1567 of 2028].

<sup>7</sup> VR: 11/23/2020; 11:20:00 to 11:20:12, TE Vol. V, (Vaughn), page 1314 [PDF 1565 of 2028].

<sup>8</sup> KYSEIA Motion to Intervene (filed July 10, 2020).

<sup>9</sup> *Id.*, page 1.

<sup>10</sup> *Id.*, page 2.

<sup>11</sup> *Id.*, pages 1 through 3.

<sup>12</sup> Order (Ky. PSC July 15, 2020), page 2.

<sup>13</sup> KYSEIA Initial Requests for Information (filed Aug. 12, 2020); and KYSEIA Supplemental Requests for Information (filed Sept. 12, 2020).

expert witnesses (Justin R. Barnes, Benjamin D. Inskeep, and James M. Van Nostrand),<sup>14</sup> and responded to requests for information from Commission Staff and Kentucky Power Company.<sup>15</sup> KYSEIA participated in the six (6) days of evidentiary hearing held in the instant case including through the cross-examination of witnesses and the presentation of each of the KYSEIA witnesses for examination by the Commissioners, Commission Staff, the Company, and the remaining parties to the case. KYSEIA also conducted post-hearing discovery.<sup>16</sup>

KYSEIA now tenders its post-hearing Brief. KYSEIA focuses its discussion upon Kentucky Power Company's proposals for a new rate for compensation for net metering service and the Company's proposed N.M.S. II tariff for net metering service. Kentucky Power Company has the burden of proof to provide the necessary evidentiary basis to support its Application.<sup>17</sup> There is no burden for KYSEIA, or any other party, to rebut any portion of the Application. Any lack of comment by KYSEIA concerning Kentucky Power Company's other proposals or relief sought should not be construed as agreement to or support of the Company's position.

### **ARGUMENT**

#### **I. KENTUCKY POWER COMPANY'S NET METERING COMPENSATION RATE PROPOSAL IS IMMATERIAL AND DOES NOT WARRANT OR REQUIRE ACTION. CONSISTENT WITH THE NORMAL RATEMAKING PROCESS OF KRS CHAPTER 278, IT SHOULD BE DENIED.**

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<sup>14</sup> KYSEIA pre-filed testimonies (filed Oct. 7, 2020).

<sup>15</sup> KYSEIA Response to Staff's First Request for Information (filed Nov. 2, 2020), and KYSEIA Response to KPC Data Request (filed Nov. 2, 2020).

<sup>16</sup> KYSEIA Post-Hearing Requests for Information (filed Nov. 25, 2020).

<sup>17</sup> KRS 278.190(3).

Kentucky Power Company offers net metering service under its Tariff N.M.S. As of the end of the test period, 36 residential customers and 10 commercial customers take service under Tariff N.M.S.,<sup>18</sup> or approximately 1 out of every 3,587 of the Company's retail customers. KRS 278.465 to KRS 278.468, which were created in 2004,<sup>19</sup> are the statutory provisions within KRS Chapter 278 addressing the net metering of electricity.

In 2019, the General Assembly amended the net metering framework in KRS Chapter 278.<sup>20</sup> Among the changes, Senate Bill 100 allows the Commission to determine a customer generator's compensation for electricity fed into the grid.<sup>21</sup> Senate Bill 100 further addressed cost recovery through rates for service to eligible customer-generators.<sup>22</sup> Additionally, KRS 278.466 describes the process through which a retail electric supplier or generation or transmission cooperative on behalf of one (1) or more retail electric suppliers initiates a proceeding for seeking a change in the compensation rate, the standard ratemaking process under KRS Chapter 278.<sup>23</sup>

In arguing the merits of its net metering proposals, Kentucky Power Company points to the Commission's May 8, 2020, Order in Case No. 2016-00016.<sup>24</sup> The Company

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<sup>18</sup> *Supra*, footnote 6.

<sup>19</sup> 2004 Ky. Acts ch. 193.

<sup>20</sup> 2019 Ky. Acts ch. 101. (hereinafter "Senate Bill 100").

<sup>21</sup> KRS 278.466(4).

<sup>22</sup> KRS 278.466(5).

<sup>23</sup> KRS 278.466(3) and (5).

<sup>24</sup> KPC Brief (filed Dec. 8, 2020), page 98 referencing Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for Renewable Energy Source Under Green Tariff Option #3*, (Ky. PSC May 8, 2020), Order.

argues that the Commission's approach to the solar renewable power agreements (RPA) in Case No. 2016-00016 is instructive. On one extremely important point from that docket, Kentucky Power Company's reliance upon the Commission's approach in Case No. 2016-00016 is remarkably persuasive for the correct result in this case. Specifically, non-significant or *de minimis* cost shifts to non-participants are not a rate design concern and do not warrant action.

The starting point for consideration is the lack of materiality associated with Kentucky Power Company's rate design proposal. The Company concedes a negligible or minimal impact of the current compensation rate through N.M.S. I, that it is not material.<sup>25</sup> The Company acknowledges that there is no current problem.<sup>26</sup>

Comparatively, as stated in the May 8, 2020, Order in Case No. 2020-00016, among the Commission's concerns are tariff provisions that "ultimately result in significant cost shifts."<sup>27</sup> Material items or significant problems are legitimate, reasonable concerns of the KRS Chapter 278 ratemaking process rather than purely academic points or insistence upon distinctions that do not correspond to any meaningful, reasonable difference.

Confirmation of this point is found in the Commission's June 18, 2020, Order in the same proceeding identified by Kentucky Power Company.

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<sup>25</sup> VR: 11/23/2020; 11:20:00 to 11:22:15; TE Vol. V, (Vaughn), pages 1314, 1316 and 1317 [PDF 1565, 1567 and 1568 of 2028].

<sup>26</sup> VR: 11/23/2020; 11:26:15 to 11:26:30; TE Vol. V, (Vaughn), page 1319 [PDF 1570 of 2028].

<sup>27</sup> Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for Renewable Energy Source Under Green Tariff Option #3*, (Ky. PSC May 8, 2020) Order, page 21.

What the Commission will not approve are proposals that permit cost shifts to accommodate customers' choices when the costs shifts are not merely *de minimis*, particularly where the opportunity to participate is limited to a small number of customers within defined classes and the cost shifts occur to nonparticipants in numerous classes. This is exactly what the Companies have proposed. The Companies negotiated agreements with Dow and Toyota, two of the only handful of customers who can even participate under Green Tariff Option #3, in order to meet corporate sustainability goals.<sup>28</sup>

Each Commission Order in Case No. 2020-00016 speaks for itself, and it is unnecessary for KYSEIA to litigate issues in that proceeding in the instant case. However, Kentucky Power Company itself relies upon the Orders in Case No. 2020-00016 as part of the ratemaking process. The Company must recognize all of the Commission's reasoning associated with its implementation of KRS Chapter 278 instead of omitting the portions of the ratemaking process that readily demonstrate the unreasonableness and absurdity of the Company's proposals.

The ratemaking process of KRS Chapter 278 considers the materiality of the cost shift to non-participants as among the determinative factors as to reasonableness and, in turn, the necessity for Commission consideration or a rate design proposal. By reference to the foundation of Kentucky Power Company's own argument on this point, the identified cost shift, when the evidence is considered most favorably on behalf of the Company, is of no consequence and does not warrant or support any rate design action.

The most likely argument by Kentucky Power Company in response to the fact that the Commission expressly includes the materiality of the cost shift to non-participants

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<sup>28</sup> *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for Renewable Energy Source Under Green Tariff Option #3*, (Ky. PSC June 18, 2020) Order, page 13.

when determining the reasonableness of a rate design proposal is that – somehow - Senate Bill 100 removes materiality from the Commission’s ratemaking process, at least as it is applied to net metering compensation rate proposals that do not address a current problem or material concern. As a threshold matter, the General Assembly was well-aware of the provisions of KRS Chapter 278 and the Commission’s ratemaking process when it amended KRS 278.466. This point is proven by the legislative decision to incorporate those provisions by reference into the amended statute.

The General Assembly’s awareness also included both the Commission’s and the Kentucky Judiciary’s recognition of the plenary powers of the agency in the ratemaking process. The Commission’s consideration of materiality in deciding whether to review and act upon a cost shift is within the Commission’s ratemaking discretion. In turn, it is part of the ratemaking process of KRS Chapter 278.

As to any argument that KRS 278.466(5), as amended, carries with it an unconditional right for a utility to seek an unreasonable and *de minimis* rate design adjustment, such an argument abrogates the Commission’s ratemaking process under KRS Chapter 278 as well as deny the Commission’s plenary authority to implement the provisions of KRS Chapter 278 in such a way that gives meaning to the entire statutory scheme. If the General Assembly had intended to provide a utility with authority to implement rates without regard to the materiality of the rate change or the reasonableness of the proposal, then it would have expressly stated that intent in KRS 278.466(5) rather than subjecting the proposal to the normal framework of KRS Chapter 278.

Statutes are not intended to produce absurd results. A plain language reading of KRS 278.466(5) must be anchored in reading the statute by reference to reason with the

goal of avoiding an absurd result. Rather than acting through such a reading, Kentucky Power Company acts based upon a myopic reading in isolation from the remaining provisions of KRS Chapter 278. The Commission has the necessary and implied powers to implement the provisions of KRS Chapter 278, including KRS 278.466(5), with the goal of an overall ratemaking process that produces fair, just, and reasonable rates while avoiding absurdity. Application of a materiality threshold to KRS 278.466(5) is wholly within the Commission's power and wholly consistent in implementing the provisions of Senate Bill 100.<sup>29</sup>

Kentucky Power Company is attempting to ride two different horses in the same race. It urges the Commission to follow a portion of its precedent in Case No. 2020-00016 while ignoring another portion of the very same precedent in Case No. 2020-00016. KYSEIA makes no concession that the cost rate calculation in Case No. 2020-00016 is appropriate for determining a compensation rate for distribution generation. KYSEIA is not required to make the concession or otherwise weigh-in on that aspect of Case No. 2020-00016. KYSEIA, however, can properly point out that the Commission's discussion of its ratemaking process in Case No. 2020-00016 clearly identifies materiality as a threshold determination in whether a cost shift to non-participants is of any concern and warrants action.

The ratemaking process of KRS Chapter 278 applies to the Company's proposal. Kentucky Power Company argues that the ratemaking process identified in KRS Case No. 2020-00016 is appropriate for resolving the net metering compensation rate issue in

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<sup>29</sup> See *Public Service Commission v. Commonwealth*, 320 S.W.3d 660, 665 (Ky. 2010) (in addition to express powers the Commission possesses powers by necessity or fair implication); see also 320 S.W.3d at 668 (statute should not be interpreted to render the larger statutory scheme meaningless).

this case. Kentucky Power Company concedes that the current net metering compensation rate is not a significant problem<sup>30</sup> and does not constitute a material matter. Accordingly, the logical result of applying Kentucky Power Company's own evidence to its own argument is that its proposal is of no consequence. It does not warrant or require any action. As per the Commission's standard ratemaking process, the proposal, which accomplishes nothing but violence to reason, should be denied as any other immaterial proposal would be denied.

**II. KENTUCKY POWER COMPANY FAILS TO MEET ITS BURDEN OF PROOF REQUIRED FOR COMMISSION APPROVAL OF ITS PROPOSED RATE TO BE USED FOR COMPENSATING ELECTRICITY FED INTO THE GRID BY CUSTOMERS WITH ELIGIBLE ELECTRIC GENERATING FACILITIES.**

The consequence of the lack of materiality is discussed in Argument I. For the reasons stated in that section, the Company's proposal for a new rate for compensation should be denied. The Company's failure to meet its burden of proof as asserted below is a separate, second reason why KPC's proposal should be denied.

**1. KRS Chapter 278 assigns the burden of proof for any change in the rate for compensating electricity fed into the grid by customers with eligible electric generating facilities to the applicant that initiates a proceeding pursuant to KRS 278.466(3).**

Pursuant to KRS 278.160, utilities are required to file and display a general schedule of rates and conditions for service, and a utility must follow its filed tariffs. KRS 278.180 prohibits any change in any utility rate except upon notice to the Commission. The Kentucky Power Company's existing N.M.S. I tariff serves as its required filed tariff for net metering service. Kentucky Power Company, through the instant proceeding,

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<sup>30</sup> *Supra*, footnote 26.

proposes to close N.M.S. I and, thereafter, provide net metering service to new customers with eligible electric generating facilities through a new tariff, N.M.S. II.

In terms of the relevant statutory provisions in KRS Chapter 278 that provide the basis for these proposed changes to Kentucky Power Company's filed tariffs, as acknowledged by Company in its Application, the proposal to close N.M.S. I and provide net metering service to new customers through N.M.S. II is submitted pursuant to KRS 278.180 and KRS 278.190.<sup>31</sup> The significance of this point is that KRS 278.466 serves as a supplement to KRS 278.180 and KRS 278.190 rather than a unique or independent basis for the review of the Company's net metering proposals. Express confirmation of this fact is through the plain language of KRS 278.466(3) and (5) which requires the Company to seek a change in rates for net metering service through the "ratemaking process" provided by KRS Chapter 278.

KRS 278.190 sets forth the procedure when a new schedule of rates is filed, and it is part of the ratemaking process required by KRS 278.466. Pursuant to KRS 278.190(3), in pertinent part: "[T]he burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility." Thus, while KRS 278.446(3) permits Kentucky Power Company to *initiate* a proceeding to set a new compensation rate for net metering service, the Company has no right to insist upon a particular rate or the approval of a new rate, and a modification of the net metering compensation rates is

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<sup>31</sup> Application (as tendered June 29, 2020), Section I, page 1. The Application also cites KRS 278.220 as a source of the Commission's statutory authority for the Company's overall request. Note: While the Application references KRS 278.220 (Uniform system of accounts for utilities), KRS 278.020 is the proper statutory basis regarding a certificate of convenience and necessity. *Id.*, page 14, Numbered Paragraph 29. KRS 278.020 is not relevant to N.M.S. I or the proposed N.M.S. II.

not mandatory.<sup>32</sup> As importantly, KYSEIA has no burden to demonstrate that the Company's net metering tariff proposal as unreasonable. No reading of KRS 278.466 shifts the burden of proof assigned to Kentucky Power Company pursuant to KRS 278.190 nor is there any suggestion that the burden of proof has been reduced.

A plain language reading of KRS 278.466 demonstrates that the only mandatory tariff change required by Senate Bill 100 is the filing of an amended net metering tariff to reflect the increase in maximum rated capacity from 30 kW to 45 kW.<sup>33</sup> This mandatory change was addressed by the Commission through Case No. 2019-00440.<sup>34</sup>

This point is significant. There is no burden of proof associated with the increase in capacity from 30 kW to 45 kW. The foregoing change to capacity was mandatory, pursuant to Senate Bill 100, as of January 1, 2020. Hence, the mandatory change consequent to Senate Bill 100 is in effect. While KRS 278.446 allows Kentucky Power Company to submit its proposal to the Commission by initiating this proceeding, there is no similar statutorily mandated change for the rate for compensation. Instead, there is a statutorily authorized process through and subject to the general ratemaking process of KRS Chapter 278 to propose the changes now sought by the Company.

The emphasis supplied by Kentucky Power Company in its discussion of KRS 278.466(3) seems unduly close to suggesting that the Commission must, in any event,

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<sup>32</sup> Kentucky Power Company acknowledges that it is "requesting that the Commission approve its proposed compensation rate using the ratemaking processes under KRS Chapter 278." KPC Brief (filed Dec. 8, 2020) page 95.

<sup>33</sup> See Case No. 2019-00440, *Electronic Amendment of Jurisdictional Electric Utilities' Net Metering Tariffs to Reflect the Increase in Maximum Rated Capacity From 30 Kilowatts to 45 Kilowatts Pursuant to the Net Metering Act*, (Ky. PSC Dec. 9, 2019), Order.

<sup>34</sup> *Id.*

approve a new rate for compensation in this proceeding.<sup>35</sup> That suggestion is at odds with a plain language reading of the KRS 278.466(3). The phrase “shall be set” refers to the process for reviewing the proposal, namely through ratemaking processes under KRS Chapter 278. It is not a statutory mandate requiring the Commission to set a new rate for compensation in the event that an applicant’s proposal is not demonstrated as just and reasonable, as required per KRS 278.190(3). KRS 278.466(3) does not create a right to a new rate; instead, it describes the process for proposing a new rate for compensation.

While Kentucky Power Company demonstrates a change in the law concerning the statutory framework for net metering<sup>36</sup> and also demonstrates that it has a statutory right to initiate a proceeding to establish a new rate for compensating an eligible customer-generator receiving service under an approved successor net metering tariff consequent to Senate Bill 100, the Company fails to meet its burden of proof that its proposed new rate for compensation is just and reasonable. Further, the Company fails to demonstrate that its proposed N.M.S. II tariff is just and reasonable. Accordingly, its proposed new rate and its proposed N.M.S. II tariff should be denied.

**2. Kentucky Power Company fails to meet its burden of proof that its proposed new rate for compensation is just and reasonable. Accordingly, the proposed rate should be denied.**

Kentucky Power Company proposes an adjustment to its rate design to recover costs to serve its eligible customer-generators; however, the Company did not conduct

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<sup>35</sup> KPC Brief (Dec. 8, 2020), page 93.

<sup>36</sup> 2019 Ky. Acts ch.101 (hereinafter Senate Bill 100).

an evaluation of the cost to serve its distributed generation customers.<sup>37</sup> The lack of a cost of service study to support the proposal is a failure of proof.

The simple fact that a customer-generator purchases less electricity from the Company than they would have otherwise purchased without distributed generation is not sufficient evidence that customer-generators are being subsidized by other customers.<sup>38</sup> The Company did not conduct distributed generation load research and an accompanying cost of service study demonstrating that current rates are not sufficient to recover all costs necessary to serve net metering customers.<sup>39</sup> The Company did not produce a reliable basis, through a complete cost of service evaluation, for proposing a new rate for compensation.<sup>40</sup>

The Company's analysis fails to properly account for a customer generator's cost of service before installation of distributed generation and fails to properly account for the contribution that distributed generation makes in altering a customer's cost of service.<sup>41</sup> Kentucky Power Company also fails to account for, among other things, distributed generation contributions to reducing the allocation of production costs, transmission costs, and primary distribution costs, all of which are allocated based upon class

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<sup>37</sup> KYSEIA Barnes pre-filed testimony (Oct. 2, 2020), page 20.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, pages 3, 18, and 37.

<sup>40</sup> *Id.*, page 18.

<sup>41</sup> *Id.*, page 19.

contribution to peaks.<sup>42</sup> Alternatively, it fails to consider if distributed generation customers already contribute less to peaks even before installing distributed generation.<sup>43</sup>

Kentucky Power Company, thus, fails to supply evidence sufficient to demonstrate the cost to serve distributed generation customers.<sup>44</sup> This deficiency in the Company's evidence is a fundamental failure by Kentucky Power Company in meeting its burden of proof.<sup>45</sup> The Company's evidentiary foundation is inadequate to demonstrate a just and reasonable rate for compensation.

The Company should correct its failures in any future filing that proposes a new rate for compensating distributed generation customers through supplying a cost of service study as well as conducting proper load research on these customers in the Company's Kentucky retail service territory. Only then can findings of fact and reliable conclusions be reached on the issue of the cost to serve distributed generation customers in comparison with what these customers pay toward that cost of service as well as appropriate measures for mitigating any discrepancies.

Furthermore, while Kentucky Power Company urges that its proposed rates "reflect a full accounting of the cost and benefits of eligible customer-generators' distributed generation systems,"<sup>46</sup> the Company's evaluation is limited to narrowly defined short-term marginal costs. It does not present an accurate picture of the long term and is not valuing

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<sup>42</sup> *Id.*, page 20.

<sup>43</sup> *Id.*, page 20; also page 13.

<sup>44</sup> *Id.*, pages 20 and 21.

<sup>45</sup> *Id.*, page 21.

<sup>46</sup> KPC Brief (Dec. 8, 2020), page 97.

future benefits and costs of distributed generation.<sup>47</sup> The Company should further support any future filing with a value of distributed energy analysis so that costs and benefits can be determined in tandem, which is a normal ratemaking process under KRS Chapter 278.

Kentucky Power Company's proposal to deploy Advance Metering Infrastructure (AMI) is instructive as to the Company's approach to supplying evidence. Kentucky Power Company did not conduct a cost-benefit analysis regarding its proposed AMI deployment.<sup>48</sup> Kentucky Power Company determined that such an analysis was unnecessary because, as it alleges, the Company knew what it could know.<sup>49</sup> The Company also found itself positioned to go "over a cliff" and in "dire straits"<sup>50</sup>

Comparatively, for its net metering proposal, there is no crisis and Kentucky Power Company is not in dire straits, of any type. The Company certainly does not know all it should reasonably know about its distributed generation customers and its cost to serve them. Assuming for argument that the failure to conduct a comprehensive study of deploying AMI is reasonable given allegedly exigent circumstances, no such circumstances excuse the Company's failure to conduct a comprehensive study for supporting its proposal to establish a new rate for compensation under KRS 278.466.

### **III. KENTUCKY POWER COMPANY FAILS TO MEET ITS BURDEN OF PROOF REQUIRED FOR COMMISSION APPROVAL OF ITS PROPOSED N.M.S. II TARIFF.**

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<sup>47</sup> KYSEIA Barnes pre-filed testimony (Oct. 2, 2020), page 12.

<sup>48</sup> VR: 11/20/2020; 09:30:41 to 09:31:33; TE Vol. IV, (Blankenship), pages 975 and 976 [PDF 1155 and 1156 of 2028].

<sup>49</sup> *Id.*

<sup>50</sup> VR: 11/20/2020; 09:34:53 to 09:36:41, TE Vol. IV, (Blankenship), pages 978 and 979 [PDF 1158 and 1159 of 2028].

KRS 278.466 provides that, upon proper approval of a new rate for compensation, netting of excess net metering generation through the amendment of KRS 278.466 consequent to Senate Bill 100 is financial in nature. Under Kentucky Power Company's existing net metering tariff, netting is on a volumetric basis. At issue in this section is when the change from a volumetric basis to financial netting must take place. The change does not occur until there is an initial net metering order that approves a new rate for compensation. Because Kentucky Power Company fails to meet its burden of proof for its proposed rate for compensation, the remaining proposed N.M.S. II tariff is neither necessary nor supportable. The Company's N.M.S. II tariff proposal is inappropriate as premature and is not demonstrated as just and reasonable as required for its approval.

There are other structural flaws that also demonstrate the proposed N.M.S. II tariff fails to meet the just and reasonable standard. Foremost, the proposed N.M.S II tariff does not appear to be designed as anything above a placeholder tariff while AMI is pursued.<sup>51</sup> A temporary mechanism provides no reasonable measure of stability through which a prospective net metering customer can make assessments and reasonably rely upon and plan.

The Company is already suggesting changes to a tariff framework that is not yet approved. If it is Kentucky Power Company's intent to discourage applications for net metering service, announcing that it could, in a future case, propose a "solution"<sup>52</sup> for a tariff mechanism it currently proposes in the instant case, the N.M.S. II proposal seems a highly effective means to carry out that intent. It is exactly the type of ratemaking proposal

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<sup>51</sup> KPC Brief (Dec. 8, 2020), page 93.

<sup>52</sup> KPC Brief (Dec. 8, 2020), page 93, footnote 487.

that is antithetical to principles such as understandability and gradualism and should be rejected by the Commission.

The second major structural flaw actually pertains to a provision of N.M.S. I and the issue of battery energy storage systems (BESS). Per the definition set forth in KRS 278.465(1): “Eligible customer-generator’ means a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer’s premises, for the primary purpose of supplying all or part of the customer’s own electricity requirements.” Per KRS 278.465(2), in pertinent part and as applied to solar energy, an “eligible electric generating facility” requires three elements: It must be connected in parallel with the electric distribution system; it must generate electricity using solar energy; and it must have a rated capacity of not greater than forty-five (45) kilowatts. Battery energy storage systems do not fall within the scope of this definition.

Kentucky Power Company takes the position that the addition of a battery energy storage system (an energy storage devise) requires a new application that will remove a customer currently taking service under N.M.S. I from the legacy provision (the grandfathering provision) of KRS 278.466(6).<sup>53</sup> Kentucky Power Company’s position is inconsistent with the intent of Senate Bill 100 and seeks to impose conditions that the legislature did not place into Senate Bill 100.

KRS 278.466(6) identifies, as the group possessing legacy rights, “an eligible electric generating facility in service prior to the effective date of the initial net metering order.” The subsection does not specify any intent to divest a member of the group possessing legacy rights based upon any change in the capacity of an eligible electric

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<sup>53</sup> KPC Response to KYSEIA (filed Aug. 26, 2020), 1-27 and 1-18(f). [PDF 35, 36, and 24 of 51].

generating facility in service under N.M.S. I, nor does it suggest any intent to divest based upon battery storage. Generating capacity and battery storage are not addressed in KRS 278.466(6).

Indeed, the General Assembly, through Senate Bill 100, actually increased the rated capacity for qualifying as an eligible electric generating facility from thirty (30) kilowatts to forty-five (45) kilowatts. In addition to the preservation of existing rights, the intent of Senate Bill 100 is to promote increases in capacity in eligible electric generating facilities. This fact must be considered in tandem with the remaining portions of Senate Bill 100. If the General Assembly had wanted to divest legacy rights for increases in capacity, then it would have expressly added that instruction in addition to termination upon the expiration of the twenty-five year period. It did not.

The pertinent section of N.M.S I serving as the foundation of Kentucky Power Company's position that addition of a battery energy storage system acts to divest legacy rights was issued on February 7, 2018, and effective as of January 19, 2018.<sup>54</sup> Thus, Kentucky Power Company seeks to interpret a tariff provision approved prior to the passage of Senate Bill 100, and the creation of legacy rights, as reasonable in addressing legacy rights subsequently established by KRS 278.466(6). The Company's position is not just or reasonable. The intent of Senate Bill 100 is to preserve legacy rights and benefits of the net metering law prior to Senate Bill 100. The intent is not punitive. The Company's position is directly contrary to the plain language intent of KRS 278.466(6) and should be rejected as any part of a proposed net metering regime. In fact, the

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<sup>54</sup> *Rates-Charges-Rules-Regulations for Furnishing Electric Service in the Kentucky Territory Served by Kentucky Power Company as Stated in Sheet No. 1, P.S.C. KY. No. 11 Original Sheet No. 27-7.*

Company's Brief omits any discussion of its additional, non-statutory, legacy termination provisions it seeks to create for itself in the aftermath of Senate Bill 100.

**IV. KENTUCKY POWER COMPANY'S VARIOUS RECRIMINATIONS AND RATIONALIZATIONS ARE MERITLESS.**

Kentucky Power Company argues that its avoided cost rates "are the sole compensation rates for net metering excess generation for Kentucky Power calculated and offered in evidence in this proceeding." (Emphasis in original).<sup>55</sup> This position is unremarkable. The Company, as the applicant seeking a change in rates, is required to calculate and offer into evidence the proposed rates. KRS 278.190(3).

The Company incorrectly alleges fault with the fact that KYSEIA did not provide compensation rates.<sup>56</sup> There is no requirement for KYSEIA, nor the Commission or any other party, to propose new rates. The burden of proof for the necessity of any change in the approved rates rests entirely with Kentucky Power Company.<sup>57</sup> It is not necessary for the Commission or anyone else to prove that the proposed change is inappropriate.<sup>58</sup> As importantly, even in a scenario in which the applicant's evidence is uncontroverted, or otherwise unrebutted, unexplained or unimpeached, that fact does not compel any finding in favor of Kentucky Power Company.<sup>59</sup> The Company fails to identify any statutory basis

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<sup>55</sup> KPC Brief (filed Dec. 8, 2020), page 98.

<sup>56</sup> *Id.*

<sup>57</sup> Case No. 8836, *Notice of Adjustment of Rates of Kentucky-American Water Company*, (Ky. PSC December 20, 1983), Order at 9.

<sup>58</sup> *Id.*

<sup>59</sup> See, for comparison, *Energy Regulatory Commission v. Kentucky Power*, Ky.App., 605 S.W.2d 46, 50 (1980).

in the Chapter 278 ratemaking process that requires KYSEIA to propose new rates as a condition for challenging Kentucky Power Company's proposals.

In the instant case, KYSEIA vehemently disagrees with the Company's characterization of the reasonableness of its net metering proposals and has affirmatively controverted the proposals through ample evidence in its filed testimonies. KYSEIA has expressly demonstrated why Kentucky Power Company's evidence fails to satisfy the Company's burden of proof. There is no requirement in the KRS Chapter 278 ratemaking process for KYSEIA to calculate compensation rates to satisfy a deficiency in the Company's proof. Moreover, the calculation of fair, just, and reasonable compensation rates by KYSEIA is impracticable because the Company itself has failed to gather and does not possess the necessary information to calculate such rates.

Kentucky Power Company's argument concerning the fact that Attorney General (AG) and Kentucky Industrial Utility Customers (KIUC) agree with the Company's "original and refined avoided cost rates" is certainly an interesting argument.<sup>60</sup> Thus, the AG and KIUC weigh in to say that they support Company action to address a matter that is not a problem and that is not material. Kentucky Power Company, noticeably, fails to explain the consequences of the various disagreements between Kentucky Power Company and the AG/KIUC. If the Company is now ready to concede that the only portions of its Application that are reasonable are the portions for which the AG/KIUC agree, then perhaps the argument has some relevance in terms of the positions in the Application that the Company is now abandoning. Nonetheless, the agreement does change the required ratemaking process.

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<sup>60</sup> KPC Brief (filed Dec. 8, 2020), page 98.

As the Commission has observed with respect for agreements between parties:

[T]he Commission reiterates its statements, made at the March 28, 2017 hearing, that it is our statutory responsibility to determine whether proposed utility rates are fair, just, and reasonable, and we cannot delegate that responsibility to the parties to these cases.<sup>61</sup>

Distilled down, Kentucky Power Company's argument seems that the position of AG/KIUC is valuable only when it agrees with the Company's position. Additionally, as manifest in KRS Chapter 278 and Commission precedent, the AG/KIUC agreement with the Company's position is not in any way binding on the Commission and is, for all intents and purposes, meaningless with regard to the assigned burden of proof and the insufficiency of the Company's evidence.

KYSEIA has already, at length in Argument I, addressed Kentucky Power Company's reliance upon the Commission's statements in its May 8, 2020, Order in Case No. 2020-00016. KYSEIA again notes that the Company's reference to Case No. 2020-00016 demonstrates the deficiency of the Company's proposal rather than any validity.

Kentucky Power Company's argument that KYSEIA urges identical tariff designs and compensation rates across all utilities is in clear error.<sup>62</sup> Foremost, the Commission itself recognizes the need for some measure of uniformity in net metering as evidenced

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<sup>61</sup> Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certifications of Public Convenience and Necessity*; and Case No. 2016-00371, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, (Ky. PSC May 3, 2017), Order, page 2.

<sup>62</sup> KPC Brief (Dec. 8, 2020), page 99.

by Case No. 2008-00169,<sup>63</sup> Case No. 2019-00256,<sup>64</sup> 2019-00440,<sup>65</sup> and 2020-00302.<sup>66</sup> If KYSEIA were, somehow, off-the-mark, then it would be in good company in that Kentucky Power Company fails to point to any judicial order that vacates or sets aside any Order or determination from the foregoing four dockets. KYSEIA, though, is not off-the-mark upon examination of the actual testimony identified by the Company in its post-hearing Brief.

Mr. Barnes testified:

Whatever determinations the Commission makes, the resulting policies and general rate structures should be made consistent across all utilities. Inconsistent policies would undermine basic fairness to all ratepayers and create unnecessary complexities for DG providers that work across multiple service territories.<sup>67</sup>

The position of KYSEIA is wholly consistent with the Commission's determinations regarding net metering, specifically, that there are net metering issues that should be considered and determined in broad-based proceedings involving all pertinent utilities and interested parties. Contrary to the representation of Kentucky Power Company, the word "identical" does not appear in the referenced testimony of Mr. Barnes nor can it be reasonably inferred. The Company's argument that KYSEIA urges identical tariff designs and compensation rates misrepresents KYSEIA's position.

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<sup>63</sup> *Development of Guidelines for Interconnection and Net Metering for Certain Generators with Capacity up to Thirty Kilowatts.*

<sup>64</sup> *Electronic Consideration of the Implementation of the Net Metering Act.*

<sup>65</sup> *Electronic Amendment of Jurisdictional Electric Utilities' Net Metering Tariffs to Reflect the Increase in Maximum Rated Capacity from 30 Kilowatts to 45 Kilowatts Pursuant to Net Metering Act.*

<sup>66</sup> *Electronic Investigation of Interconnection and Net Metering Guidelines.*

<sup>67</sup> KYSEIA, Barnes pre-filed testimony (filed Oct. 7, 2020), page 7.

Kentucky Power Company offers yet another somewhat odd argument regarding the fact that its current net metering tariff compensation rate is immaterial. As part of its rationale for moving forward with its proposed N.M.S. II, the Company states that it must deal with customer generator compensation before it becomes a significant problem.<sup>68</sup> As to premise that the one percent statutory cap (KRS 278.466(1)) effectively operates to contain if not prevent the “significant problem” that the Company fears, Kentucky Power Company supports its decision by reference to legislative changes that Company speculates may take place.<sup>69</sup>

In placing the Company’s hyperbole, the supposed looming net metering crisis, into proper context, it merits mention that as of the end of the test period, Kentucky Power Company had 36 residential customers and 10 industrial customers taking net metering service.<sup>70</sup> Kentucky Power Company has approximately 165,000 retail customers.<sup>71</sup> Thus, approximately 0.028 percent (.00028) of the Company’s retail customers take service under the Company’s net metering tariff, roughly 1 out of every 3,587. There is remarkably little wonder as to why Kentucky Power Company declined to identify the financial impact of N.M.S. I on non-participating customers.<sup>72</sup>

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<sup>68</sup> VR: 11/23/2020; 11:26:15 to 11:26:30; TE Vol. V, (Vaughn), pages 1319 and 1320 [PDF 1570 and 1571 of 2028].

<sup>69</sup> VR: 11/23/2020; 11:26:30 to 11:27:26; TE Vol. V, (Vaughn), page 1320 [PDF 1571 of 2028].

<sup>70</sup> VR: 11/23/2020; 11:18:03 to 11:18:14; TE Vol. V, (Vaughn), page 1313 [PDF 1564 of 2028]; see also KPC response to Staff’s Fourth Request (filed Aug. 26, 2020), 4-82(a).

<sup>71</sup> Application (as tendered June 29, 2020), Section III, Vol., 1, D. Brett Mattison pre-filed testimony, page 3, line 19 [PDF 6 of 359]; also see Section II – Filing Requirements Exhibit P, page 181 of 256. [PDF of 2028].

<sup>72</sup> VR: 11/23/2020; 11:20:00 to 11:27:26; TE Vol. V, (Vaughn), pages 1314 to 1320 [PDF 1565 to 1571].

“Between 2008 and 2019, Kentucky Power’s [sic] lost 10,184 customers or approximately 6.4 percent of its total customers.”<sup>73</sup> It is truly unfortunate for all of Kentucky Power Company’s customers that the Company has unnecessarily focused resource on a supposed looming net metering crisis when it could have better used that same resource on other challenges currently faced by the Company.

**V. THE COMMISSION SHOULD REJECT KENTUCKY POWER’S PROPOSED COGEN/SPP TARIFFS AND REQUIRE TARIFFS THAT PROVIDE CLARITY, ALLOW FOR FINANCIAL STABILITY, AND THAT ARE BASED ON REASONABLE AND RELIABLE CALCULATIONS.**

Until June 1, 2020, Kentucky Power was permitted to deviate from requirements to file biennial reports related to KPC’s avoided costs and its capacity plan for the next ten years. As a result, the Commission did not have the opportunity to adjudicate the reasonableness of Kentucky Power’s cogeneration tariffs, particularly as they related to the avoided costs data that, under normal circumstances, would have been filed.<sup>74</sup> To correct this, the Commission initiated a proceeding to determine whether to revoke or modify the Order that permitted Kentucky Power to deviate from requirements established in 807 KAR 5:054 to file those biennial reports and capacity plans for the next ten years.

The Commission noted that a contributing factor for the impetus as it relates to timing in initiating that investigation is Kentucky Power’s public comment and proposal in Case No. 2019-00256 that “Net metering customer-generators could sell all of the energy generated by the systems at market-based prices.”<sup>75</sup> The Commission states, “Insofar as an examination of Kentucky Power’s avoided costs data becomes necessary

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<sup>73</sup> Application (as tendered June 29, 2020), Section III, Vol., 1, Cynthia G. Wiseman pre-filed testimony, page 21 [PDF 46 of 359].

<sup>74</sup> Case No. 2020-00134, *Electronic Investigation of Kentucky Power Company’s Deviation from 807 KAR 5:054, Section 5(1)(A) and (2)*, (Ky. PSC June 1, 2020), Order, page 1.

<sup>75</sup> *Id.*, (Ky. PSC Apr. 28, 2020), Order, page 3.

in the context of determining rates and service related to the implementation of the amended Net Metering Act, the timing of this investigation is directly implicated.”<sup>76</sup> The Commission eventually found “that good cause exists and therefore, pursuant to KRS 278.390, revokes the Order issued on August 4, 2000 in Case No. 2000-00279 that permitted Kentucky Power to deviate from the filing requirements of 807 KAR 5:054, Sections 5(1)(a) and (2),” and, “that the reasonableness of Kentucky Power’s cogeneration tariffs, particularly as they relate to the avoided cost data filed in this proceeding, will be adjudicated in Case No. 2020-00174, the pending rate case for which Kentucky Power filed notice on May 29, 2020.”<sup>77</sup>

With that June 1, 2020 Order, and the recent amendments to FERC regulations, the Commission has an opportunity to ensure that ratepayers are indifferent to utility-owned and non-utility-owned generation assets and encourage the development of qualifying small power production facilities and cogeneration facilities within Kentucky Power’s service area as FERC requires.<sup>78</sup> The Company is proposing to update the pricing of energy and capacity for both two different COGEN/SPP tariffs, one of which applies to QFs of 100kW or less and the other that applies to QFs of 100 kW to 20 MW, lowering the energy rates from \$0.0324/kWh to \$0.0261/kWh for the standard metering option, and from \$0.0386/kWh to \$0.0306/kWh and \$0.0279/kWh to \$0.0228/kWh for the on-peak and off-peak energy rates, respectively. The Company also proposes *de*

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, (Ky. PSC June 1, 2020) Order at 1-2.

<sup>78</sup> PURPA, Section 210(a); 16 U.S.C. § 824a–3.

*minimus* changes to the monthly capacity credits.<sup>79</sup> While both tariffs provide for a contract “period not less than one year,” they do not otherwise specify the duration of potential contracts.<sup>80</sup>

Instead, and in light of the June 1, 2020 Order, and the recent amendments to FERC regulations, the Company’s COGEN/SPP tariffs should be modified to clearly specify that QFs have the option to receive compensation at the prevailing rates at the time the QF establishes a legally enforceable obligation (“LEO”), with the allowable duration set at a minimum of ten years in order to facilitate QF financing and create true ratepayer indifference by leveling the playing field between utility-owned and non utility-owned generation. The Commission should also require Kentucky Power to revise its calculation of avoided capacity costs to use a 20-year useful life in place of a 40-year useful life, and a capital cost of at least \$799/kW in place of \$700/kW.

When Kentucky Power’s one percent statutory cap is reached, all customers generators that would have otherwise taken service under a net metering tariff will now be subject to a COGEN/SPP tariff.<sup>81</sup> Establishing fair, just, and reasonable rates under the COGEN/SPP Tariffs becomes even more important to the financial viability and indiscriminate access of not only current COGEN/SPP customers, but future customers who are limited by the one percent cap.

- 1. The COGEN/SPP Tariffs Should Be Modified to Allow QFs to Seek a Contract with Pricing Based on Rates at the Time of the Establishment of a LEO, that Specifies the Length of Time that a QF May Provide Energy and Capacity Under a Locked-In Rate, and the Duration of that Locked-In Rate Should be at Least Ten Years.**

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<sup>79</sup> Application, (as tendered June 29, 2020), Section II, Exhibit E, pages 104 and 107.

<sup>80</sup> KYSEIA Barnes pre-filed testimony (Oct. 2, 2020), page 43, lines 17-19.

<sup>81</sup> KRS 278.466(1).

Up until FERC issued Order No. 872, FERC regulations have afforded QFs the right to elect to deliver power “as available” or over a specified contract period, and to fix the avoided cost rates for both capacity and energy either at the time the LEO is established or at the time power is delivered. Order No. 872 now allows states to eliminate, if they so choose in the exercise of the wide discretion accorded them under PURPA, the requirement that a utility must afford a QF the option to enter a contract at a rate for energy that is either fixed for the duration of the contract or determined at the outset based on, for example, a forward curve reflecting estimated prices over the term of the contract.<sup>82</sup> Order No. 872 also establishes a rebuttable presumption, rather than a per se rule, that locational marginal prices (“LMPs”) may reflect a purchasing electric utility’s avoided energy costs.<sup>83</sup> While, this will afford more flexibility and deference to the Commission in the administration of PURPA and the determination of avoided costs, the Commission should still require Kentucky Power to afford clear and unambiguous tariffs that allow for price certainty and financial stability for QFs.

**i. The COGEN/SPP Tariff Should Specify that A QF can Receive Rates Based on the Time a LEO Is Established.**

807 KAR 5:054 sets forth the manner in which the Commission discharges its duties conferred upon it by PURPA and FERC.<sup>84</sup> A QF may establish a LEO and have the option for rates “on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred.”<sup>85</sup> For facilities larger than 100 kW, the

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<sup>82</sup> KYSEIA Van Nostrand pre-filed testimony (October 2, 2020), page 13, line 25-30, page 14, 1-8.

<sup>83</sup> *Id.*, page 14, lines 5-8.

<sup>84</sup> 807 KAR 5:054, Section 2.

<sup>85</sup> 807 KAR 5:504, Section 7, (2)(b) and (4)(b).

rates specified in the rate schedule are to “be used only as the basis for negotiating a final purchase rate.”<sup>86</sup> For those same QFs, if the utility and QF cannot agree on the purchase rate, then the Commission shall determine the rate after a hearing.<sup>87</sup> While the proposed COGEN/SPP tariffs do not directly conflict with 807 KAR 5:054, the COGEN/SPP tariffs suggest that QFs are subject to rate changes every time those rates are modified. To provide clarity and stability, the COGEN/SPP Tariff should be revised to clearly specify that QFs may seek a contract with pricing based on rates at the time of the establishment of a LEO.

**ii. The Commission Should Require Kentucky Power to Offer Long Term Contracts to QFs.**

Kentucky Power’s proposed COGEN/SPP tariffs do not expressly offer QFs an option to enter into a long-term contract for rates, although both tariffs provide for a contract “period not less than one year.”<sup>88</sup> Without a contract period, QFs are subject to rate changes every time the rates are updated.<sup>89</sup> Such rate changes make it difficult if not impossible to secure QF financing. Long-term contracts and the accompanying price certainty are necessary for QF project financing.<sup>90</sup>

Beyond project financing, fixed long term avoided cost allows for ratepayer indifference required by PURPA, including whether generation is developed by a utility as a rate-based asset or purchased from an independent power producer.<sup>91</sup> When a

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<sup>86</sup> *Id.*, Section 7(4).

<sup>87</sup> *Id.*

<sup>88</sup> Application (as tendered June 29, 2020), Section II, Exhibit E, pages 105 and 108.

<sup>89</sup> KYSEIA Barnes pre-filed testimony (Oct. 2, 2020), page 44, lines 15-21.

<sup>90</sup> *Id.*, page 46, lines 15-16.

<sup>91</sup> *Id.*

regulated utility builds a generation asset, it can essentially lock in a set of associated costs and recover those costs. PURPA requires a level playing field to allow QFs to do the same. By requiring the option of long-term contracts, the Commission is furthering PURPAs non-discriminatory requirements between utility-owned and non utility-owned generation.

As noted by KYSEIA Witness Barnes, many states have required QF contract terms ranging from 10 to 25 years.<sup>92</sup> Specifically, the Arizona Corporation Commission recently established a long-term fixed price QF contract in December 2019 in response to proposals from the Arizona Public Service and Tucson Electric Power to limit QF contracts to two years. Now, QFs larger than 100 kW must be given the opportunity to enter contracts of up to 18 years at the utilities' long term avoided costs.<sup>93</sup> For Kentucky Power Company, the Commission should require a minimum contract period of ten years in order to facilitate QF financing and create true ratepayer indifference.<sup>94</sup>

In sum, Kentucky Power's COGEN/SPP tariffs should be rejected. The Commission should require Kentucky Power to clearly specify that QFs have the option to receive compensation at the prevailing rates at the time the QF establishes a LEO, with the allowable duration set at a minimum of ten years in order to facilitate QF financing and create true ratepayer indifference.

## **2. Kentucky Power Has Failed to Utilize Reasonable and Reliable Avoided Capacity Costs Calculations.**

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<sup>92</sup> *Id.*, page 45, lines 12-21.

<sup>93</sup> *Id.* at 45, lines 5-12, *citing Arizona Corporation Commission*. Docket No. E-01345A-16-0272. Decision No. 77512. December 17, 2019, available at: <https://docket.images.azcc.gov/0000200428.pdf>

<sup>94</sup> *Id.*, page 52, lines 6-12.

Kentucky Power proposes capacity rates for the COGEN/SPP tariff at \$7.49/kW-month for on-peak capacity under TOD and \$3.12/kW-month for standard non-TOD metering.<sup>95</sup> The calculation used to determine these rates utilize a 40-year economic life for a hypothetical combustion turbine and a capital cost estimate of \$700/kW. Both of these are unreasonable and cause the calculated cost of capacity to be understated. Instead, as Witness Barnes testified, a 20-year useful life and a capital cost estimate of at least \$799/kW should be used to calculate the capacity costs.<sup>96</sup>

With regards to the useful life, other recognized industry resources use a 20-year useful life for the same type of generation unit Kentucky Power Company proposes. This includes PJM in developing its Cost of New Entry (“CONE”) and Lazard LLC in its recent Levelized Cost of Energy (“LCOE”) assessment.<sup>97</sup> In addition, Kentucky Power Company’s parent company, American Electric Power (“AEP”) has carbon reduction goal of 80% by 2050 relative to 2000, and that it will likely achieve an even greater reduction by that time.<sup>98</sup> Thus, Kentucky Power Company is not likely to rely on a natural gas peaking unit through 2060, and an aging natural gas combustion plant will likely be uneconomical more than 20 years from now.<sup>99</sup> In response, Kentucky Power Company’s rebuttal states only that “All of the Company’s affiliates’ [hypothetical combustion turbine]

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<sup>95</sup> Application, Vaughan pre filed testimony (June 29, 2020), Exhibit AEV-1, page 55.

<sup>96</sup> KYSEIA Barnes pre-filed testimony (Oct. 2, 2020), page 48, lines 3-7.

<sup>97</sup> *Id.*, page 49, lines 2-7.

<sup>98</sup> *Id.*, page 49, lines 8-12.

<sup>99</sup> *Id.*, page 49, lines 12-16.

use at least a 40 year depreciable life.”<sup>100</sup> Again, the Company’s reliance on something believed to be true without factual support is unreasonable and arbitrary.

Utilizing a capital cost of at least \$799 consistent with the lower end of PJM estimates of \$799/kW to \$898/kW, and also at the lower end of Lazard’s 2019 LCOE reported costs of \$700/kW to \$950/kW, Witness Barnes calculated a \$9.95/kW-month on-peak capacity rate and a \$4.14/kW average capacity rate.<sup>101</sup> This provides a consistent and prudent capacity rate calculation based on a published and reliable hypothetical useful life of a natural gas combustion turbine and capacity cost. Kentucky Power’s reliance on unsupported AEP practices, rather than published numbers and studies, results in a rate that is not fair, just or reasonable.

The Commission should reject Kentucky Power’s proposed avoided capacity costs and instead use a 20-year useful life in place of a 40-year useful life, and a capital cost of at least \$799/kW in place of \$700/kW.

### **CONCLUSION**

In summary, Kentucky Power Company has produced a substantial amount of information for a negligible matter that is not a problem. Furthermore, the Company failed to submit the evidence that is necessary to sustain its burden of proof under KRS Chapter 278 to demonstrate that its rate proposal will result in just and reasonable rates. It is the

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<sup>100</sup> KPC Vaughan rebuttal testimony (Nov. 9, 2020), page R44, lines 6-8.

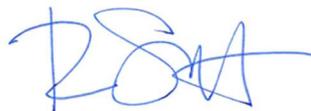
<sup>101</sup> KYSEIA Barnes pre-filed testimony (Oct. 2, 2020), page 50, lines 15-18, page 51, lines 1-3, *citing Brattle Group. PJM Cost of New Entry: Combustion Turbines and Combined-Cycle Plants* with Jun 1, 2022 Online Date. April 19, 2018, Table ES-2, p. vii, available at: <https://www.pjm.com/~media/committees-groups/committees/mic/20180425-special/20180425-pjm-2018-cost-of-new-entry-study.ashx>; *PJM, Preliminary Default MOPR Floor Offer Prices for New Generation Capacity Resources*, February 28, 2020 presentation to the Market Implementation Committee, p. 5, available at: <https://www.pjm.com/~media/committees-groups/committees/mic/2020/20200228-mopr/20200228-item-03a-pjm-preliminarycone-values.ashx>; and *Lazard’s Levelized Cost of Energy Analysis – Version 13.0*, p. 18, available at: <https://www.lazard.com/media/451086/lazards-levelized-cost-of-energy-version-130-vf.pdf>.

quality, particularly the relevance and reliability, of the evidence rather than the quantity of information under the ratemaking process in KRS Chapter 278. Kentucky Power Company has failed to satisfy its burden of proof. Its proposed new rate for compensation and its proposed N.M.S. II tariff should be denied. Its proposed practice under its existing N.M.S tariff concerning the addition of a battery energy storage system and the Company's plan to terminate the legacy protections of KRS 278.466(6) for reasons not authorized by Senate Bill 100 should be determined unlawful as contrary to statute and rejected as unreasonable as a practice.

Kentucky Power's COGEN/SPP tariffs should be rejected. The Commission should require Kentucky Power to clearly specify that QFs have the option to receive compensation at the prevailing rates at the time the QF establishes a LEO, with the allowable duration set at a minimum of ten years in order to facilitate QF financing and create true ratepayer indifference. The Commission should also reject Kentucky Power's proposed avoided capacity costs and instead require a 20-year useful life in place of a 40-year useful life, and a capital cost of at least \$799/kW in place of \$700/kW.

WHEREFORE, KYSEIA respectfully submits this post-hearing Brief.

Respectfully submitted,



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Randal A. Strobo  
Clay A. Barkley  
David E. Spenard  
STROBO BARKLEY PLLC  
239 S. Fifth Street, Suite 917  
Louisville, Kentucky 40202  
Phone: 502-290-9751

Facsimile: 502-378-5395  
Email: rstrobo@strobobarkley.com  
Email: cbarkley@strobobarkley.com  
Email: dspenard@strobobarkley.com  
*Counsel for KYSEIA*

**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 14<sup>th</sup> day of December, 2020, 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.



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Randal A. Strobo

**CERTIFICATE OF SERVICE**

Undersigned counsel certifies that it has transmitted on this 14<sup>th</sup> day of December 2020, via electronic mail messages, a notice of the electronic filing of the Brief and the accompanying Read1st file for the electronic filing to the parties of record at the electronic mail addresses listed below. The Commission has not excused any party from electronic filing procedures for this case.

Mark R. Overstreet  
Katie M. Glass  
Stites & Harbison  
421 West Main Street  
P. O. Box 634  
Frankfort, Kentucky 40602-0634  
moverstreet@stites.com  
kglass@stites.com

Christen M. Blend  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Post Office Box 16631  
Columbus, Ohio 43216  
cmblend@aep.com  
*Counsel for Kentucky Power Company*

J. Michael West, Assistant Attorney General  
Lawrence W. Cook, Assistant Attorney General  
John G. Horne II, Assistant Attorney General  
Angela M. Goad, Assistant Attorney General  
Office of the Attorney General  
700 Capital Avenue, Suite 20  
Frankfort, Kentucky 40601  
Michael.West@ky.gov  
Larry.Cook@ky.gov  
John.Horne@ky.gov  
Angela.Goad@ky.gov  
*Counsel for the Attorney General, Daniel J. Cameron*

Michael L. Kurtz  
Kurt J. Boehm  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
mkurtz@BKLawfirm.com  
kboehm@BKLawfirm.com  
jkylercohn@BKLawfirm.com  
*Counsel for KIUC*

Joe F. Childers  
Joe F. Childers & Associates  
300 Lexington Building  
201 West Short Street  
Lexington, Kentucky 40507  
joe@childerslaw.com

Matthew E. Miller  
Sierra Club  
2528 California Street  
Denver, Colorado 80205  
matthew.miller@sierraclub.org  
*Counsel for Sierra Club*

Thomas J. FitzGerald  
Counsel & Director  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, Kentucky 40602  
fitzkrc@aol.com  
*Counsel for Joint Intervenors Mountain Association, Kentuckians for the  
Commonwealth, and Kentucky Solar Energy Society*

Michael A. Frye  
Jenkins Fenstermaker, PLLC  
325 Eight Street  
Huntington, WV 25701  
maf@JenkinsFenstermaker.com  
lal@JenkinsFenstermaker.com  
*Counsel for SWVA Kentucky, LLC*

Don C. A. Parker  
Spilman Thomas & Battle, PLLC  
300 Kanawha Blvd, East  
Charleston, WV 25301  
dparker@spilmanlaw.com

Barry A. Naum  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
bnaum@spilmanlaw.com

Carrie H. Grundmann  
Spilman Thomas & Battle, PLLC  
110 Oakwood Drive, Suite 500  
Winston-Salem, NC 27103  
cgrundmann@spilmanlaw.com  
*Counsel for Walmart Inc.*



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Randal A. Strobo