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

KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
POST-HEARING MEMORANDUM BRIEF

Comes now the Kentucky Solar Industries Association, Inc. (KYSEIA), by and through counsel, and, pursuant to the Commission's April 8, 2021 Order, files this Post-Hearing Memorandum Brief. The Commission should deny Kentucky Power Company's proposed Net Metering Service ("NMS II") tariff; further, the Commission should expressly reject, as unlawful and unreasonable, Kentucky Power Company's "material change" argument for terminating legacy rights created by KRS 278.466(6).

ARGUMENT

In the instant case, Kentucky Power Company proposes to close its current Net Metering Service (hereinafter "NMS I") tariff and replace it with the proposed Net Metering Service ("NMS II") tariff.[1] After, among other things, a multi-day evidentiary hearing on the Company's Application and briefing by the parties, the Commission entered an Order

[1] Order (Ky. PSC Jan. 13, 2021), page 82.

on January 13, 2021 through which it 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."[2] The Company did not demonstrate that its evidence was sufficient.[3]

In lieu of simply rejecting Kentucky Power Company's net metering proposal due to the Company's failure to meet its burden of proof, the Commission ordered additional proceedings.[4] The Commission's additional proceedings have included the filing of additional testimonies, discovery, and a two-day evidentiary hearing.

KYSEIA submits that Kentucky Power Company again fails to provide sufficient evidence in the additional proceedings to carry its burden of proof. For this reason, the proposed NMS II tariff should be denied. Further, under the assumption that Kentucky Power Company's evidence is meaningful, it shows that the Company's proposed NMS II tariff actually increases the alleged net metering subsidy over the status quo under NMS I. Finally, the Company has taken a position that is clearly at odds with the legislative intent for the changes to Kentucky's net metering law. Specifically, the Company incorrectly argues that the purpose of the law is to divest net metering tariff rights rather than to preserve them. The Commission should, therefore, again deny the Company's proposal and further expressly reject the Company's divestment strategy.

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[2] *Id.* at 85.
[3] *Id.* See also Order (Ky. PSC Feb. 22, 2021), page 28 ("[T]here is no merit in Kentucky Power's assertion that it provided sufficient evidence to carry its burden [for its proposed Tariff NMS II].").
[4] *Id.* at 114 and 115.

1. Kentucky Power Company's Evidence Remains Insufficient to Carry the Company's Burden of Proof that Its Proposed NMS II Tariff Rates Are Fair, Just, and Reasonable.

A. Evidence Submitted by Kentucky Power Company Prior to January 13, 2021 Was Not Sufficient to Carry the Company's Burden of Proof.

Kentucky Power Company has the burden of proof. In supplying evidence with its Application, the Company submitted a Class Cost-of-Service Study (also "CCOSS") with its Application. The Company's analysis in its Application, among other things, 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.[5] The Company did not support its Application with proper load research on its net metering customers.[6]

Further, the Application 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 contributions to peaks,[7] matters that the Company has not studied and does not know.

The Company's failure to supply evidence sufficient to demonstrate the cost to serve its distributed generation customers was a fundamental failure by the Company in meeting its burden of proof. The Commission made clear, both in its January 13, 2021 Order and its February 18, 2021 Order denying, in pertinent part, the Company's motion

[5] KYSEIA Barnes pre-filed Testimony (Oct. 2, 2020), page 19 [PDF 21 of 54].
[6] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 12 [PDF 12 of 22].
[7] KYSEIA Barnes pre-filed Testimony (Oct. 2, 2020), page 20 [PDF 22 of 54].

for rehearing, that Kentucky Power Company failed to provide sufficient evidence to carry its burden of proof.[8]

The Company's evidence submitted prior to the Commission's January 13, 2021 Order has not improved with age and fails to provide any basis for supporting the Company's allegation that its NMS II tariff rates are fair, just, and reasonable. In fact, the Company's evidence submitted prior to January 13, 2021 is antagonistic to the Company's evidence submitted in the additional proceedings and serves to demonstrate that Kentucky Power Company's evidentiary failure to carry its burden remains complete.

B. Evidence Submitted by Kentucky Power Company After January 13, 2021 is Unreliable, Unreasonable, and is not Sufficient to Carry the Company's Burden of Proof.

For the additional proceedings, Kentucky Power Company produced a revised Class Cost-of-Service Study. In terms of presentation, the CCOSS for the additional proceedings expands the number of classes from seven to nine by adding "Residential NMS" and "Commercial & Industrial NMS" classes to establish separate classes for net metering customers.[9] The CCOSS for the additional proceedings also contains revised load shapes.

The fundamental flaws from the initial proceedings remain the same flaws in the additional proceedings. The Company did not provide new or compelling evidence that it properly accounted for either the difference between NMS customers and other customers or for the costs that the Company avoids when customers turn to relying on their own generation.

[8] Order (KY PSC Jan. 13, 2021), page 85; Order (KY PSC Feb. 18, 2021), page 26.
[9] KPC Stegall Supplemental Testimony (Feb. 25, 2021), page S2 [PDF 4 of 9].

An examination of additional evidence concerning the revised Class Cost-of-Service Study information supplied by the Company through the Supplemental Rebuttal Testimony of Jason M. Stegall ("Stegall Supplemental Rebuttal") filed on March 25, 2021 demonstrates that the revised Class Cost-of Service Study is not reliable nor reasonable. The Company's approach to explaining its net metering proposal continues to suffer from the same evidentiary flaws that it suffered from prior to the Commission's January 13, 2021 Order.

For the additional proceedings, the Company did not conduct a load research study on its net metering customers to develop representative load profiles of its net metering customers.[10] The Company failed to collect the data necessary to conduct a cost-of-service study on its actual net metering customers.[11]

If anything, Kentucky Power Company's information has become more unreliable. The Company created net metering customer load profiles for the additional proceeding that are based upon unreasonable and unreliable assumptions.[12] First, the lack of actual data for net metering customers remains as before. The new cost-of-service analysis is based on the load profiles created by the Company for *all* customers of the applicable customer class rather than actual load profile characteristics of the net metering customers.[13]

From a starting point of a load profile that is not based upon nor specific to net metering customers,[14] the Company subtracted class average system solar generation

[10] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 5 [PDF 5 of 22].
[11] *Id.,* page 7 [PDF 7 of 22].
[12] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 5 and 6 [PDF 5, 6 of 22].
[13] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 7 [PDF 7 of 22].
[14] *Id.*, page 8 [PDF 8 of 22].

seemingly based upon kWh delivered to its actual net metering customers.[15] Thereafter, the Company "scaled" the resulting load profiles to fit them into the actual test year usage for net metering customers resulting in an artificial or phantom increase in the hourly load calculated for net metering customers.[16] The Company did not determine the load shapes of its net metering customers through conducting a load research study. Instead, it created artificial load shapes for residential and non-residential net metering customers based on unsubstantiated assumptions.

The Company's new evidence in the additional proceedings shows residential net metering customers with a substantially higher average net load compared to non-net metering residential customers during non-solar producing hours.[17] The load profile created by Kentucky Power Company shows that a residential net metering customer would have an average peak load approximately 64 percent higher than a non-net metering customer and an average load that is between approximately 64 percent and 66 percent higher than the residential class profile for all non-daylight hours.[18]

These higher average loads for residential net metering customers reflected in the Company's CCOSS, however, are a result of the Company's unsupported assumptions and the scaling method it applied, and not actual data specific to its net metering customers. And on the other hand, the Company fails to credit these customers for their higher contribution to margin that would cover a higher share of the "fixed" costs that the Company claims are invariant with usage. If costs cannot be avoided through self-

[15] *Id.,* page 9 [PDF 9 of 22].
[16] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 9 [PDF 9 of 22].
[17] *Id.*
[18] *Id.,* page 11 [PDF 11 of 22].

generation, then costs also cannot be increased from higher loads. The Company created load profiles for its net metering customers to fit its advocacy.

Kentucky Power Company's position on this point for the additional proceedings conflicts with its position in the initial proceedings. Specifically, in explaining the "underlying loads of net metering customers," the Company previously stated: "Net metering customers' underlying loads are no different than the other customers in their standard tariff class, they have simply chosen to add behind the meter generation to their load."[19] Further, the Company offered that net metering customers' load shapes "are the same as non-net metering customers' load shapes except when solar generation is ***reducing*** the load shape (emphasis added)."[20] Yet the net metering load shapes that the Company created to perform its so-called cost-of-service analysis in the additional proceedings are in fact materially different from the load shape used for non-net metering customers.

For example, the Company's cost-of-service study produces a maximum non-coincident peak ("NCP") demand of 9.07 MW for net metering customers and a maximum NCP demand of 5.58 MW for non-net metering customers.[21] In turn, all costs that the Company allocates based upon a maximum NCP basis will be higher per customer for net metering customers than for non-net metering customers, yet the difference is not based upon *actual measured* differences in the maximum NCP between these customer groups.[22] Again, this is from the same Company whose prior evidence is that the load shapes are the same except when solar power is reducing the load shape.

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[19] KPC Vaughan Rebuttal Testimony (Nov. 9, 2020), page R38 [PDF 249 of 273].
[20] *Id.*
[21] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 16 [PDF 16 of 22].
[22] KYSEIA Inskeep Rebuttal (Mar. 25, 2021), page 17 [PDF 17 of 22].

The antagonism present in the Company's representations concerning net metering customer loads readily demonstrates why evidence resulting from actual load research and production data concerning Kentucky Power Company's net metering customers is necessary. The Company's additional evidence in the form of construed or fitted load information is unreasonable and unreliable.

Furthermore, there are additional problems with Kentucky Power Company's load profile information. Specifically, the cost-of-service study assigns a demand of zero (0) for hours when the respective net metering class is exporting electricity to the grid.[23] However, in practice, an export to the grid during a peak hour, which reduces net loads on upstream electric facilities, has a value equivalent to a reduction in load that takes place behind the customer's meter. The Company does not want to consider the benefits but only the costs.[24]

The Company failed to support its Application with a Class Cost-of-Service Study based upon data collected from its actual net metering customers. The revised Class Cost-of-Service Study information supplied for the additional proceedings suffers from the same fundamental flaw. The revised Class Cost-of-Service Study is unreasonable, unreliable, and is not sufficient to demonstrate that the Tariff NMS II rates are fair, just, and reasonable. Accordingly, Kentucky Power Company has failed to meet its burden of proof, and its proposed Tariff NMS II should be denied.

The fundamental flaws from the initial proceedings remain the same flaws in the additional proceedings, though increased in severity. The Company did not provide new or compelling evidence that it properly accounted for either the difference between NMS

[23] *Id.,* page 16 [PDF 16 of 22].
[24] *Id.*

customers and other customers or for the costs that the Company avoids when customers turn to relying on their own generation.

2. Kentucky Power Company's Proposed NMS II Tariff Appears to Make the Alleged Subsidy Problem Worse.

KYSEIA submits, for reasons stated in the foregoing Section 1, that Kentucky Power Company's NMS II tariff should be denied. Nonetheless, KYSEIA points out that evidence offered by Kentucky Power Company in the additional proceedings suggests that Kentucky Power Company's proposed NMS II tariff appears to make the alleged subsidy problem worse.

The purpose of the Stegall Supplemental Rebuttal "is to provide a corrected version of the supplemental Class Cost-of-Service Study ("CCOSS") and Revenue Allocation exhibits" and "provide a refined version of the CCOSS and Revenue Allocation that reflect revised revenues calculated by Witness Vaughan to reflect revenues for net metering customers collected under the proposed NMS II tariff."[25]

Exhibit JMS-SR1 (Revised Net Metering Class Cost-of-Service Study) and Exhibit JMS-SR2 (Revised Revenue Allocation) present the "going-level rates of return ("ROR"), relative rates of return, and class subsidies" that result from the revised Class Cost-of-Service Study for the additional proceedings.[26] Exhibit JMS-SR3 (NMS II Net Metering Class Cost-of-Service Study) and Exhibit JRM-SR4 (NMS II Revenue Allocation) work in combination to demonstrate what the Company would have collected under NMS II.[27]

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[25] KPC Stegall Supplemental Rebuttal (Mar. 25, 2021), page S2 [PDF 4 of 9].
[26] *Id.,* page S3 [PDF 5 of 9].
[27] VR: 04/06/2021; 15:34:35 to 15:36:14; see also Stegall Supplemental Rebuttal (Mar. 25, 2021), page S2 [PDF 4 of 9].

As per Exhibit JMS-SR2, Page 2 of 3, the alleged "Current Subsidy" for the residential net metering customer class ("RS NMS" per the Exhibit) is $22,723. Per the same Exhibit, the alleged "Current Subsidy" for the commercial and industrial net metering customer class ("C&I NMS" per the Exhibit) is $20,246. The total alleged subsidy for the net metering classes is $42,969.[28]

As per Exhibit JMS-SR4, Page 2 of 3, the alleged "Current Subsidy" for the residential net metering customer class ("RS NMS" per the Exhibit) for rates collected under the proposed NMS II tariff is $21,917. Per the same Exhibit, the alleged "Current Subsidy" for the commercial and industrial net metering customer class ("C&I NMS" per the Exhibit) for rates collected under the proposed NMS II tariff is $24,857. The total alleged subsidy for the net metering classes under the proposed NMS II tariff is $46,774, an amount, remarkably enough, in excess of the alleged existing subsidy. The new proposed tariff reduces the alleged subsidy to residential customers by less than 8 percent and ***increases*** the commercial one by more than 22 percent.

Kentucky Power Company's cost-of-service study information produced during and for the additional proceedings show that revenues collected under the proposed NMS II tariff create a *larger* subsidy problem. The Company has not presented a tariff that materially solves the alleged problem, and it should be denied. Setting aside the evidentiary problems, and also setting aside the rate case expense associated with forwarding the net metering proposal to address a negligible matter that is not a problem, if the Company's concern was an alleged subsidy to the net metering classes, it would have been better off by not proposing the NMS II tariff.

[28] See also VR: 04/06/2021; 16:09:55 to 16:10:33.

3. Kentucky Power Company's Desire to Divest Net Metering Legacy Rights Created by Statute is Both Unlawful and Unreasonable.

Kentucky Power Company proposes to use a "material change" test to divest eligible electric generating facilities from the grandfathering or legacy provisions created by Senate Bill 100[29] and set forth by KRS 278.466(6).[30] Under the Company's proposal, a solar net metering customer under the NMS I tariff would lose all of their legacy rights if they subsequently add a battery storage system, install any additional solar panels, or have to replace an existing solar panel that becomes defective with a different type of solar panel that the Company does not consider to be a "like for like" replacement (e.g., if the existing type of solar panel is no longer being manufactured or is unavailable to use as the replacement). The proposal is both unlawful and unreasonable. The "material change" test is not contained in KRS 278.466. In fact, KRS 278.466 does not address applications for net metering service. The "material change" test is a creation of Kentucky Power Company rather than the Kentucky Legislature.

What the General Assembly clearly intends to provide, through Senate Bill 100, is protections for eligible electric generating facilities in service prior to the effect date of an initial net metering Order by the Commission. This is the same sort of protection afforded other contractual relationships that the Company has, such as power purchase agreements.[31] The statutory limitation concerning the duration of the grandfathering or legacy protection is that the term of the protection ends after a twenty-five (25) year period. If the Legislature had intended to create a "material change" divestment

[29] 2019 Ky. Acts Ch. 101.
[30] VR: 04/06/2021; 13:36:25 to 13:38:57.
[31] KYSEIA McCann Supplemental (Feb. 25, 2021), pages 5 and 6 [PDF 10 and 11 of 20].

mechanism, it would have done so. Kentucky Power Company, on its own initiative, cannot create a statutory provision that does not exist. Its efforts to do so are unlawful.

Eligible electric generating facilities subject to the protections of KRS 278.466(6) can be repaired, replaced, and/or modified (including the battery storage) without forfeiting legacy rights. KYSEIA does not suggest that KRS 278.466(6) exempts eligible electric generating facilities from regulatory concerns regarding, for example, safety and interconnection; however, safety and interconnection[32] are matters that are wholly separate from KRS 278.466(6) legacy protection. So, while it is true that net metering customers have responsibilities and limitations concerning repair, replacement, and modification, the Legislature did not choose to link these matters to legacy protections let alone establish them as reasons for the termination of the legacy rights created pursuant to KRS 278.466(6).

In addition to being unlawful as contrary to statute, Kentucky Power Company's practice is an unreasonable practice. Because net metering provides benefits to the utility and non-net metering customers, it works against the provision of benefits to disincentivize repair, replacement, and modification. The Company's proposed practice to "chill" refinements and improvements to eligible electric generating facilities through threatening the net metering customers through extinguishing a legislatively created protection is unreasonable.

For the foregoing reasons, the Commission should expressly reject and deny Kentucky Power Company's "material change" test for divesting legacy rights created

[32] The existing interconnection guidelines were developed prior to the creation of legacy rights through KRS 278.466(6) and are presently being reviewed in a separate proceeding, KY PSC Case No. 2020-00302. While KYSEIA acknowledges that repair, replacements, and modifications, in some instances, necessitate applications or submissions requiring approval, such approvals are separate from legacy rights issues.

pursuant to KRS 278.466(6). The “material change” test has not been established by the Legislature, and its implementation by Kentucky Power Company would run directly contrary to and frustrate the intent for KRS 278.466(6).

WHEREFORE, KYSEIA respectfully requests the Commission deny Kentucky Power Company’s proposed NMS II tariff and “material change” test.

Respectfully submitted,

/s/ David E. Spenard

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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 21st day of April 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