

**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) Case No. 2020-
Regulatory Assets And Liabilities; (4) Approval Of A) 00174
Certificate Of Public Convenience And Necessity;)
And (5) All Other Required Approvals And Relief)

**RESPONSE OF JOINT INTERVENORS IN OPPOSITION
TO MOTION OF KENTUCKY POWER COMPANY FOR REHEARING**

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INTRODUCTION

Joint Intervenors Mountain Association (MA), Kentucky Solar Energy Society (KYSES) and Kentuckians for the Commonwealth (KFTC), (“Joint Intervenors”) file this *Response In Opposition To Motion Of Kentucky Power Company For Rehearing* (Joint Intervenors’ Response”) in accordance with the provisions of 807 KAR 5:001, Section 5(2), which provides seven (7) days to file a response to a motion.

ARGUMENT

Joint Intervenors concur with the arguments advanced by Walmart Inc., the Kentucky Solar Energy Industry Association, and, with one exception,¹ the arguments advanced by the Attorney General and Kentucky Industrial Utility Customers (AG/KIUC) in opposition to the *Motion of Kentucky Power Company For Rehearing* (“KPC Motion”). For those reasons, and for the reasons stated below, Joint Intervenors respectfully request that the KPC Motion be denied in its entirety.

The Public Service Commission (“Commission”) committed no error in rejecting the request for a Certificate of Public Convenience and Necessity (CPCN) for AMI as well as the proposed Grid Modernization Rider (GMR). The Commission likewise committed no error in rejecting the proposed ROE.

The Joint Intervenors’ Response will focus on the KPC Motion requesting rehearing on NMS II. If the Commission grants rehearing on any matter set forth in the KPC Motion, Joint Intervenors respectfully reserve the right to participate fully in any subsequent proceedings relating to such a rehearing. Additionally, silence on any

¹ Joint Intervenors disagree that proposed NMS II is fair, just, or reasonable, or consistent with the underlying statute, but concur with the Attorney General and KIUC that the matter should not be reheard given the scheduled discovery and hearing on NMS II.

particular subject raised in the KPC Motion does not equate to agreement or assent to the position stated. The Commission’s Order carefully and thoroughly addressed each aspect of the KPC proposed tariffs and requested CPCN, and the KPC Motion presents no legal or factual basis supporting rehearing.

I. KPC Failed To Adequately Justify The Proposed NMS II Tariff And The Commission Properly Rejected The Proposed Tariff

In the Commission’s January 13, 2021 *Order* (“Order”), the Commission found that its decision regarding net metering rates “should be deferred to allow Commission Staff to work with its consultant to ensure that there is sufficient evidence to support the conclusion that Kentucky Power’s proposed Tariff NMS II rates are fair, just, and reasonable.” *Order* at p. 85. The Commission observed that:

Relevant here, Kentucky Power did not conduct a cost of service study or provide any cost support for serving net metered customers. Instead, Kentucky Power proposed to use avoided cost as the basis for net metering rates. The Commission is not convinced by Kentucky Power’s arguments that avoided cost should be the basis for establishing new net metering rates.

Order, supra, at pp. 84-85.

In its Motion For Rehearing on NMS II, KPC makes three arguments. The first is that it *did* provide a cost of service study. The second is that such a study is not required to establish NMS rates because “[n]othing in the Net Metering Act dictates the use of a class cost of service study in establishing rates under the act.” Finally, the KPC Motion argues that “general ratemaking principles and Commission practice” don’t require a separate cost of service study for an individual or group of customers within a customer class and that in the January 13, 2021 *Order* approved “multiple specific rates within broad customer classes without the benefit of a cost of service study for each rate classification.” KPC Motion at pp. 43-44.

For the reasons provided in the Post-Hearing Brief of Joint Intervenors, and for the additional reasons stated below, the KPC Motion for Rehearing regarding the NMS II Tariff should be rejected.²

With respect to the first point, it is uncontested that KPC did not address the quantifiable benefits of net-metered systems. KPC provided no analysis regarding the quantifiable benefits derived to the utility or to other customers from the participation in that utility service area of net-metering customers. As such, as noted in the Van Nostrand testimony, the pre-filed Direct Testimony of James Owen, and by the Commission itself in the Letter to Senator Smith, a fair, just, and reasonable rate must consider and offset costs and benefits. *See: Post-Hearing Brief of Joint Intervenors*, pp. 2-13.

KPC has conducted no such analysis of quantifiable benefits that would allow the Commission to determine whether the benefits offset or outweigh the costs of serving the customer-generator. Instead, as noted in the pre-filed Direct Testimony of Andrew McDonald, “[t]he Company has provided a simplistic, one-sided analysis of the costs associated with net metering[.]” *Direct Testimony of Andrew McDonald*, pp. 9-10. KPC acknowledged as much in response to Joint Intervenor Data Request 2-016, when admitting that “*The Company has not proposed ‘an accounting of the costs and benefits of net metering.’*”

A full cost of service study was not conducted since the true cost of service cannot be ascertained without quantifying and netting out the costs and the benefits.

² KPC alternatively requests that the Commission enter an Order on rehearing “specifying the type of study or evidence it believes it requires to establish fair, just, and reasonable NMS rates.” Joint Intervenors believe that the Commission has made clear that it expects a full cost of service study and other evidence demonstrating that the proposed NMS II rates are fair, just, and reasonable.

As noted by the Commission in the *Letter from Public Service Commission to Senator Brandon Smith*, February 18, 2019 (“Smith Letter”), which is part of this Record by virtue of the Commission’s incorporation of the record in *In the Matter Of: Electronic Consideration of the Implementation Of The Net Metering Act*, Case No. 2019-00256,

Utilities and the territories they serve have quite distinct differences, and it is because of these variations that the ratemaking process should reflect a utility’s unique characteristics and the specific cost of serving that utility’s customers. The same holds true for examining the quantifiable benefits and costs of net-metered systems.

Id.

As the Commission noted in the *Smith Letter*, the “Commission has broad authority to consider all relevant factors presented during a rate proceeding, which would include evidence of the quantifiable benefits and costs of a net-metered system.” KPC failed to consider quantifiable benefits of distributed resources from generator-customers and failed to present analysis demonstrating the cost of serving net-metering customers and impact on non-participating customers. When asked in JI-2-027 to provide “all analysis performed to show the rate impact, if any, of providing service under the current N.S. (sic) tariff, on non-net-metering customers[,]” the Company responded by stating “that it has not performed the requested analysis.” The Company further stated, “The Company objects to this request because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.”

The Commission committed no error in concluding that a cost of service study had not been performed, and that the evidence was insufficient to support the conclusion that the “avoided cost” represented a fair compensatory credit.

With respect to KPC’s second argument, that a cost of service study is not required to be conducted to support the proposed compensatory rate for NMS customers, KPC is simply mistaken. KRS 278.466(5) provides “[u]sing the ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators.”

Inherent in this provision are two concepts – first, that the burden is on the retail electric supplier to demonstrate that the proposed rates reflect “all costs necessary to serve its eligible customer-generators” and second, that the proposed rate structure must be justified “without regard for the rate structure for customers who are not eligible customer-generators.” Since KPC seeks to put in place a tariff unique to this subset of residential and commercial customers, it must demonstrate that the proposed rates are fair, just, and reasonable with respect to this subset of such customers. Where, as here, KPC has failed to do so, the Commission committed no error in rejecting the proposed NMS II tariff.³

PRAYER FOR RELIEF

For the reasons stated in its Post-Hearing Brief, and for the reasons stated herein, Joint Intervenors respectfully request that the Commission:

³ The Commission committed no error in rejecting the KPC proposition that the utility’s avoided cost was the measure of compensatory credit for fed-in solar electricity. Had the General Assembly intended to merely replace the 1:1 relationship of electricity fed-in and that consumed with valuation based on the utility’s “avoided cost,” it would have enacted House Bill 227 as it was first introduced during the 2018 General Assembly Regular Session. That bill never made it out of the initial committee to which it was assigned.

1. Overrule in its entirety the KPC Motion for Rehearing; and
2. Grant any and all other relief to which Joint Intervenors may appear entitled.

Respectfully submitted,



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Certificate of Service

This is to certify that the electronic version of the foregoing is a true and accurate copy of the same document that will be filed in paper medium; that the electronic filing has been transmitted to the Commission on February 9, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that in accordance with the March 16, 2020 Commission Order in Case No. 2020-00085 an original and ten copies in paper medium of this filing will not be mailed until after the lifting of the current state of emergency.



Tom FitzGerald