

**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)	

POST-HEARING BRIEF OF JOINT INTERVENORS
IN RESPONSE TO POST-HEARING BRIEF OF KENTUCKY
POWER COMPANY

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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 Post-Hearing Brief in accordance with the schedule provided by the Commission at the conclusion of the formal hearing on the *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*, PSC Case No. 2020-00174.

Joint Intervenors will address several issues – the KPC proposed Net Metering (“NMS II”) tariff; the increase in basic service charges for residential customers; KPC’s proposed ROE; the Certificate of Public Convenience and Necessity (“CPCN”) and the proposed “Grid Modernization Rider” (“GMR”) proposed for cost recover for deployment of the Advanced Metering Infrastructure (“AMI”). Joint Intervenors address each issue *seriatim*.

ARGUMENT

I. KPC Has Failed To Adequately Justify The Proposed NMS II Tariff And The Proposed Tariff Should Be Rejected

The KPC proposed NMS II tariff proposes to devalue excess generation of electricity from customers with rooftop solar who take service under the NMS II tariff, in two fashions: first, by devaluing the credit that is provided to a customer for electricity generated during a billing cycle that is in excess of that consumed by the customer and which is fed into the grid for use by other customers; and second, by limiting the times of day during which the customer may apply those credits against usage.

The KPC-proposed NMS II tariff is inconsistent with the provisions of SB 100 and fails to properly account for and incorporate into the rate of crediting of fed-in excess solar, the numerous benefits provided by distributed generation customers taking service under a net-metering arrangement.

Before addressing the inconsistency of the proposed NMS II tariff with the intent and language of SB 100, it is important to understand that the alleged intra-class subsidization that KPC claims to amount to “more than 6.5 cents/kilowatt-hour (“kWh”),” *KPC Brief* p. 93, has a miniscule rate impact on non-participating customers, accepting for the sake of argument all of the numbers provided by KPC, and ignoring for the sake of analysis, all of the benefits that were identified by witnesses for Intervenors and Joint Intervenors yet ignored by KPC in assessing the appropriate credit to be provided for excess fed-in solar.

As witness Andrew McDonald testified at hearing, based on his own calculations and using KPC data, that the total impact of the alleged “subsidy” was 4/10ths of one cent per month or “approximately 5 cents per year per customer.” Transcript Volume VI (“Tr. Vol. VI”)pp. 1648-9.¹

In order to eliminate the 5 cent “subsidy,” KPC proposes to drive the value of fed-in excess solar from 9.8 cents per kilowatt hour, down to the “avoided cost” of approximately 3.55 cents per kilowatt hour for residential customers and 3.78 for

¹ That the calculations Mr. McDonald made were his own, and were based on KPC information in this case, is clear. When asked whether the calculations were those of Mr. Rabago performed in connection with the 2019 administrative case or were Mr. McDonald’s own calculations, he responded that “Karl Rabago provided that study in his testimony, and I updated the figures in it based on the data that was provided by Kentucky Power in the – in this case.” Tr. Vol. VI, p 1650.

commercial customers, and to further limit the times during which the excess-generation credit could be applied to offset the costs of electricity used.

In so proposing, KPC claims that the NMS II is consistent with the revisions to the net metering statutes effected by the Kentucky General Assembly through the adoption of SB 100, and that devaluing the fed-in excess generation to reflect the “avoided cost” is necessary to prevent intra-class “subsidization” of non-participating customers to those taking service under the current NMS tariff.

It is important, in viewing the inadequacy of the proposed NMS II tariff, to understand the changes effected to the prior net metering law by SB 100, which was adopted in 2019 and became effective on January 1, 2020. The KPC characterization of the changes effected by SB 100 as providing “for the end of, or at least a drastic reduction in, the subsidies to net metering customers that the previous net metering statute produced” is pure hyperbole, since the changes to the existing statute do no such thing.

The changes effected to existing net metering law by SB 100 did change the basis upon which the value of the electricity consumed and generated by an eligible customer-generator would be credited, from a “kilowatt-hour” comparative measurement to one expressed as a “dollar value.” Nothing in that change, however, presupposed that the dollar value ascribed to fed-in electricity would be higher or lower than a 1:1 ratio. Instead, the General Assembly directed that the Public Service Commission set that rate of compensatory credit “using the ratemaking processes under this chapter[.]” KRS 278.466(3).

KRS 278.466(5) provides that the utility “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[.]”

Inherent in this provision is that in determining what is the actual cost of service to the net-metering customer, the *value* of the electricity being fed in to the system in excess of consumption, and other values associated with the presence of that customer-generator in the utility system, must be calculated. The Commission understood this in communicating with Senator Brandon Smith, the primary sponsor of Senate Bill 100, regarding a House Floor Amendment to SB 100 that, among other things, would have identified the specific benefits of fed-in solar that must be considered when setting the credited rate:

February 18, 2019

VIA EMAIL

Senator Brandon Smith
Chair, Natural Resources
and Energy Committee
702 Capital Avenue
Annex Room 252
Frankfort, KY 40601

Re: Senate Bill 100, House Floor Amendment 1

Dear Senator Smith:

Because of the extensive changes to Senate Bill 100 (SB 100) adopted by the House of Representatives in House Floor Amendment 1 (HFA 1), the Public Service Commission is compelled to oppose the bill. As explained in our Feb. 14, 2019 letters to you and Rep. Gooch, the original language in SB 100 would have established a practical approach to addressing a utility’s compensation for net-metered systems through the ratemaking process. In its current form, however, SB 100 is fatally flawed.

First, there are the procedural challenges presented by the provision in HFA 1 requiring the establishment of a ratemaking proceeding before the Commission no later than one year from the effective date of the Act. The Commission does not have sufficient staff to adequately conduct

concurrent ratemaking proceedings for all retail electric suppliers during such a compressed timeframe. 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.** Attempting to rush the consideration of these issues within an artificially compressed timeframe or trying to force the Commission to address the issue for all electric utilities and customer-generators in one administrative case, as HFA 1 appears to be aimed at doing, is not in the best interests of ratepayers or any other stakeholder.

Second, the Commission has concerns regarding the language describing what the Commission *shall* consider in reviewing a net metering tariff. **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.** See *Kentucky Public Service Com'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 383 (Ky. 2010) (The Commission has “plenary authority to regulate and investigate utilities and to ensure that rates charged are fair, just, and reasonable under KRS 278.030 and KRS 278.040.”). Benefits of generation from net-metered systems vary for a number of reasons, including locational benefits, specific utility load factors, etc. Statutory language explicitly dictating *only* what the Commission is to consider in a rate proceeding (as HFA 1 does in Section 2, paragraph 5) is antithetical to standard principles of utility ratemaking.

* * *

The original provisions of Senate Bill 100 create a transparent process that would have allowed broad participation among all stakeholder interests with the ability of the Commission to fulfill its statutory directive to establish rates that are fair, just, and reasonable to all ratepayers. Unfortunately, instead of permitting the Commission to conduct proceedings addressing net-metered systems using established principles of utility ratemaking, the provisions of HFA 1 create a process that appears to favor the interests of a particular group over other stakeholders, including ratepayers. As such the Commission requests that the Senate reject HFA 1 to Senate Bill 100.

Letter from Public Service Commission to Senator Brandon Smith, February 18, 2019. (Emphasis added). (“Smith Letter”).²

² The Commission can take official notice of the existence and contents of the Letter. It is also attached as Attachment 1 to the Preliminary Comments of the Kentucky Resources Council in *In the Matter Of: Electronic Consideration of the Implementation Of The Net*

The Smith Letter makes clear that the narrow construction of SB 100 by KPC is inconsistent in several ways with the intent and language of the statutory changes as reviewed and understood by the Commission at the time that SB 100 was being deliberated.

First, as the Commission notes in the Smith Letter, a ratemaking process should address the costs of serving the customer-generator and the benefits derived, in determining whether the proposed rate is fair, just, and reasonable:

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.**

Smith Letter, supra, at p. 1.(Emphasis added).

The failure of KPC to address the quantifiable benefits of net-metered systems makes the proposed NMS II tariff inherently unreasonable. Had the General Assembly intended to merely replace the 1:1 relationship of electricity fed-in and that consumed with 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 the Commission has represented to the General Assembly that examination of quantifiable benefits is a necessary consideration in determining whether the proposed rate is fair, just, and reasonable, the absence of such consideration in the development of NMS II requires that the proposed tariff be rejected.

Metering Act, Case No. 2019-00256, the record of which has by Order of the Commission been incorporated into this case.

In expressing opposition to the proposed language of House Floor Amendment 1 to SB 100, which would have specified which benefits of fed-in electricity would be considered, the Commission further underscored that the **benefits** of distributed generation are a necessary component of the inquiry into the reasonableness of a proposed net-metering tariff:

[T]he Commission has concerns regarding the language describing what the Commission *shall* consider in reviewing a net metering tariff. **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.**

Smith Letter, supra, at p. 1 (Emphasis added).

KPC has failed abjectly to provide any 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. The uncontradicted testimony of witness Van Nostrand for Intervenor KYSEIA and the pre-filed Direct Testimony of James Owen on behalf of Joint Intervenors identified a number of quantifiable benefits that should have been evaluated by KPC but were not:

In response to questioning from the Office of Attorney General, witness Van Nostrand noted, as suggested by the Commission to Senator Smith, that a fair rate must consider and offset costs and benefits:

The grid receives substantial benefits from a net-metered customer: Capacity, energy, locational benefits that might reduce loads in a certain constrained area, environmental benefits to the extent they're displacing carbon-emitting resources, potential just load reduction in transmission distribution infrastructure to the extent the generation is being produced closer to the load, so you don't have to transmit it over longer distances. There's substantial benefits. There's also the resilience value to the grid, which I've written a couple articles about. There's no question that the distributed energy resources confer value to the grid.

Q. Okay. Do you agree that under net metering that nonparticipants in solar generation are subsidizing those customers that are net-metering participants?

A. I think that depends on whether the cost-of-service studies substantiate that. I know that's an allegation made by (indiscernible) utility industry, but that usually termed cost subsidization, but I think you need to determine what are the values that the DRs provide to the grid and compare that to the compensation they receive and see if there's a match. If they provide benefits that correspond to the level of contributions, no, there's no cost subsidization by definition.

Tr. Vol. VI pp. 1617-1618.

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.

The lack of such a study was underscored in the pre-filed Direct Testimony of Andrew McDonald:

Q. Is KPC's proposed NMII tariff based on a comprehensive assessment of the costs and benefits of net metering to the Company and its ratepayers?

A. No, it is not. The Company has provided a simplistic, one-sided analysis of the costs associated with net metering. In response to our question JI_1_026, the Company summed up their approach by stating, *"The current NMS Tariff increases costs for nonparticipating customers by reducing fixed cost collection for service and infrastructure being used by participating customers, thus increasing costs for all other customers."* When asked to provide the references consulted in developing its methodology for accounting the costs and benefits of net metering, (JI_2_016), KPC replied, *"The Company has not proposed 'an accounting of the costs and benefits of net metering.'"*

In his testimony on behalf of the Joint Intervenors (Mountain Association, KFTC, and KYSES), Mr. James Owen has described the multiple benefits that distributed generation can provide to the utility, ratepayers, and society. Mr. Owen describes the dozens of studies of the value of solar that have been performed across the United States, as well as methodologies that now exist to guide these studies.

Direct Testimony of Andrew McDonald, pp. 9-10.

The Commission should reject KPC's proposed NMS II tariff for several reasons: it is based on an incomplete and inadequate cost-benefit analysis which excludes significant benefits provided by net metering to the Company and its ratepayers; it fails to provide the most basic financial analysis to evaluate the scale of the costs they seek to recover; and because the financial impact of net metering on ratepayers has been shown to be negligible. As noted by witness McDonald "It would be unfair, unjust, and unreasonable to undermine every customer's ability to enjoy the benefits of distributed solar energy, and diminish the economic viability of solar companies working in Eastern Kentucky, and deprive the region of the economic development potential offered by distributed solar, with so little justification." *Id, supra*, p. 10.

Finally, witness James Owen's undisputed testimony concerning the benefits of fed-in solar underscore the Commission's position that in determining whether a net metering tariff is fair, just, and reasonable to all ratepayers, benefits to that utility and other ratepayers must be evaluated. The insufficiency of the *ad-hoc* and cavalier approach to evaluating costs and benefits presented by KPC in this case stands in stark contrast to the thoughtful methodical approach undertaken by other states:

Thus, it is in the Commission's discretion to determine what rate will provide the Company with all of its fixed and demand-based costs. In setting this rate in this case and all other related cases, the Commission should ensure it is accounting for all costs and benefits associated with customer-owned solar energy systems. Additionally, the Commission should hold utilities to their full burden of proof and require them to produce substantial evidence for all of the costs and benefits that each solar system contributes to the utility's system. As Mr. Vaughan's testimony (and the Company's Exhibit AEV-3) explains, the Company's proposed rate includes: avoided energy costs at the Company's marginal cost of energy, including marginal losses and congestion; distribution

losses; and avoided generation and transmission fixed costs. Yet Mr. Vaughan does not discuss whether the Company assessed the system-wide benefits or savings experienced due to solar, which include: reduced transmission and distribution losses; reduced congestion at stressed nodes and distribution points along the grid; peak load reductions or shifts; reduced costs along the fuel supply line; reduced environmental liabilities and/or environmental compliance costs; avoided generation capacity investments; reduced grid support services; improved grid resiliency; and others. These savings and benefits extend beyond the simple “cost of electric service” to the particular customer-generator. It is my opinion that the Company has not met its burden of proving that its rate of \$.03659/kWh is the equitable figure for compensating customer generators.

* * *

Q: How have other states approached the issue of assessing the costs and benefits of distributed solar for purposes of customer-generator compensation?

A: The concept of the Value of Solar has been a topic of conversation in the United States for more than a decade. Many states have taken it upon themselves to solicit and conduct studies of all the costs and benefits of integrating distributed solar onto the grid. More often than not, these studies conclude that solar provides a net benefit to a utility’s system, more than making up for the added costs to the grid or the reduced fixed costs paid by each customer-generator. These studies have led experts to conclude that the economic benefits of net metering actually outweigh the costs and impose no significant cost increase for non-solar customers. This conclusion obviously flies in the face of the common utility argument that solar customers receive a cross subsidy from non-solar ratepayers. Many states have conducted Value of Solar studies of one form or another. States that have existing studies include: Arizona (2016 and 2013); Arkansas (2017); California (2016, 2013, 2012, 2011, 2010, 2005); Colorado (2013); Florida (2005); Hawaii (2014); Iowa (2016); Louisiana (2015); Massachusetts (2015); Maine (2015); Mississippi (2013); North Carolina (2014); Nevada (2017, 2014); New Jersey and Pennsylvania (2012); New York (2012 and 2008); South Carolina (2015); Texas (2014), including for the cities of San Antonio (2013) and Austin (2006); Utah (2014); Vermont (2014); Virginia (2014); and Wisconsin (2016).³ Other states have conducted dockets and processes for establishing a Value of Solar methodology or framework, such as: Minnesota (2014); Rhode Island (2015); and New York (2016). In addition to state studies, several cities and utilities have conducted their own, and the majority of studies

³ Solar Energy Industries Association, “Solar Cost-Benefit Studies,” Available at: <https://www.seia.org/initiatives/solar-cost-benefit-studies>

arrive at a value for solar kWhs that is higher than the average retail rate for electricity in the jurisdiction. The party conducting the study seems to matter as well. Studies conducted by utilities typically find a lower value for solar, although usually still more than the retail cost of electricity. In 2016, Frontier Group and Environment America's Research and Policy Center published a meta-analysis of 16 value-of-solar studies, and found that studies that left out societal benefits valued solar, on average, at 14.3 cents per kilowatt-hour, compared to 22.9 cents for those studies that at least accounted for greenhouse gas emissions.⁴ Only one of the studies found a solar value less than KPC's proposed compensation rate in this case. This is more than enough reason for the Commission to refrain from accepting one utility's proposed rate and instead conduct its own docket to study the costs and benefits of net metering system-wide.

There are numerous resources to aid regulators in determining how to design a Value of Solar study. I recommend a resource from the National Renewable Energy Laboratories (NREL), which has published a program design guide for regulators that includes considerations for conducting a study and implementing its findings.

Direct Testimony of James Owen, pp. 32-35.

The comprehensive analyses undertaken by numerous jurisdictions to determine the costs and benefits of net-metering customers that are highlighted in witness Owen's Direct Testimony stand in stark contrast to the *ad-hoc*, incomplete assessment of the costs, and complete failure with respect to benefits, provided by KPC.

Not only has KPC failed to properly consider quantifiable benefits of distributed resources from generator-customers, it has failed to present analysis demonstrating the cost of serving net-metering customers. As noted in Mr. McDonald's pre-filed Direct Testimony:

Q. Has KPC established the overall cost of net metering to the Company and the rate impact of net metering to non-net metering ratepayers?

⁴Gideon Weissman and Bret Fanshaw, "Shining Rewards: The Value of Rooftop Solar Power for Consumers and Society." October 2016, Frontier Group and Environment America Research and Policy Center. Available at: <https://environmentamerica.org/sites/environment/files/reports/AME%20ShiningRewards%20Rpt%20Oct16%201.1.pdf>

A. No, it has not. In our second set of data requests (JI-2-027), we asked, “For each of the last five years provide the financial cost of net metering to the utility. 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.”

For multiple years KPC worked alongside other investor owned utilities, East Kentucky Power Cooperative, and industry lobbyists to lobby the legislature to change Kentucky’s net metering statute, on the premise that net metering was causing an unfair cost-shift between ratepayers and presumably causing a measurable, non-negligible financial impact to the general ratepayer. It is therefore notable that KPC has performed no analysis of the financial impact of net metering to the Company itself or to non-net metering customers. While rhetorical arguments which are unsupported by evidence have been persuasive with legislators, the Commission has an obligation to ensure that rates are just, fair, reasonable, and based on the evidence.

Direct Testimony of Andrew McDonald, pp. 5-6.

KPC’s proposed NMS II tariff has not been demonstrated to have considered all quantifiable costs and benefits of net-metering, and as such, has not been demonstrated to be fair, just, and reasonable to all ratepayers. As such, and consistent with the Commission’s observations in the Smith Letter, it must be rejected pending a proper assessment of costs and benefits.

II. The Commission Should Reject The KPC Proposal To Increase The Meter Charge

As noted in the Direct Testimony of James Owen and not disputed by KPC, the residential customers in the service area of Kentucky Power Company have been suffering the effects of a decades-long economic downturn, which predated and has been amplified by the COVID-19 pandemic.

Against this backdrop, Joint Intervenors believe that the proposed increase in the monthly basic service charge from \$14.00 to \$17.50 per customer should be rejected.

The proposal to increase the basic service charge is consistent with efforts by other utilities in the country to do so in recent rate cases. *Direct Testimony of James Owen*, (“*Owen*”) p. 24. While a higher fixed charge provides utilities with reduced loads and reduced consumption with a guarantee of cost recovery, *Owen* p. 24-5, such action would have a detrimental effect on low-income customers, low-usage customers, net-metering customers, and on overall energy conservation and efficiency opportunities that the company claims to favor and uses in this case to justify AMI deployment:

An increase to the basic service charge, as proposed in this tariff, introduces a negative feedback loop into the cycle of energy generation, consumption, and subsequent demand. Namely, by raising standard fees that do not vary with customer energy use and over which customers themselves have no control, the proposed basic service charge increase will have the adverse effect of disincentivizing energy conservation and energy efficiency investments of residential customers.

The proposed \$3.50 increase will violate rate-design principles regarding bill predictability for customers reducing consumption, and will impose a substantial shock to customers.

Owen, p. 24.

Considered in light of the January 2018 increase in the customer charge from \$11 to \$14, in only a few years, the increase in the basic service charge will have risen by \$6.50, or cumulatively, over 59%. *Owen*, pp. 25-26. If approved, the residential customers in the most distressed region of the Commonwealth would bear the burden of the highest such charge of any IOU in the Commonwealth. *Owen*, pp. 25-6.

For these reasons and based on the analyses provided by witness Owen in Direct Testimony at pp. 25-9, Joint Intervenors respectfully request that the current basic service charge of \$14 be maintained.

III. Joint Intervenors Oppose The Requested 10% ROE

Joint Intervenors concur with the positions of Intervenors SWVA, Wal-Mart, and the AG/KIUC that the proposed ROE of 10% is much higher than has been justified. In addition to the reasons provided by those parties, based on the Direct Testimony of witness James Owen, Joint Intervenors believe that the proposed 10% ROE failed to properly balance the interests of the utility and ratepayers as required:

Determining ROE is one of the most contentious issues in any rate case but, like almost everything with utility regulation, requires a balance between the needs of the utility and the interests of the public.

Q: Does the request by KPC provide such a balance as required by law?

A: No. As the Company witness McKenzie testifies, the primary reason KPC is seeking a 10% ROE is to attract capital to their investments. Again, this is only a portion of the formula required by law which states “(a) reasonable return on equity, as developed by the U.S. Supreme Court is: (1) adequate to attract capital at reasonable terms, thereby enabling the utility to provide safe and reliable electric service; (2) sufficient to ensure the Companies’ financial integrity; and (3) commensurate with returns on investments in enterprises having corresponding risks.” As proposed, the ROE sought by KPC only meets one of the required criteria. Inherent in setting a just and reasonable rate is a requirement for the Commission to make rates as affordable as possible for the ratepayers without causing detriment to the utility. To accomplish this, it is crucial that the Commission keep ROE as low as reasonably possible. Because the Commission must balance the interests of the customers and the utility, a ROE that awards shareholders one dollar more than that minimum amount which is required to provide a fair opportunity to earn a reasonable return on investment is an unjust and unreasonable ROE. The effect of ROE on the customers and the affordability of rates in this case is staggering.

Direct Testimony of James Owen, pp. 17-19.

Joint Intervenors respectfully request, as recommended by witness Owen following his comparison of the requested ROE with other utilities in Kentucky and around the nation, and in light of the economic conditions for residential and commercial customers in the KPC service area (as exacerbated by COVID-19), that;

A: Given the economic challenges facing eastern Kentucky at this point in time, issuing such a high ROE would be a detriment to KPC's ratepayers. I believe the Commission should look to award KPC an ROE towards the lower end of any analysis conducted by Commission staff. This would be consistent with the most recent Commission ruling on ROE and factors in the economic circumstances of their ratepayers in determining what a "fair and reasonable" ROE constitutes during such an unprecedented period. An ROE similar to what was ordered in that previously decided Duke Kentucky case would be appropriate not only for the ratepayers of KPC but for the Company itself.

Direct Testimony of James Owen, pp. 23-24.

IV. Joint Intervenors Dispute That KPC Has Met The Threshold For a CPCN for The AMI Infrastructure, And Objects To Use Of A Rider For Cost Recovery

The standard for determining whether a new system or service satisfies the requirements for issuance of a Certificate of Public Convenience and Necessity ("CPCN") are outlined in the case of *Kentucky Utilities v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952):

We think it is obvious that the establishment of convenience and necessity for a new service system or a new service facility requires first a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

Second, the inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.

The above two factors have relation to the *need* of particular consumers for service. However, our concept of the meaning of 'public convenience

and necessity,' as expressed in our decisions in previous cases, embodies the element of absence of wasteful duplication, as well as a need for service. (Citations omitted) Therefore, a determination of public convenience and necessity requires both a finding of the need for a new service system or facility from the standpoint of service requirements, and an absence of wasteful duplication resulting from the construction of the new system or facility.

At first impression, it might appear that the two requirements are in reality only one, because there could not be a need for a new service system or facility if the construction of the system or facility would result in wasteful duplication. This impression would be correct if 'duplication' is considered as having only the meaning of an excess of capacity over need. However, we think that 'duplication' also embraces the meaning of an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties, such as right of ways, poles and wires. An inadequacy of service might be such as to require construction of an additional service facility to supplement an inadequate existing facility, yet the public interest would be better served by substituting one large facility, adequate to serve all the consumers, in place of the inadequate existing facility, rather than constructing a new small facility to supplement the existing small facility. A supplementary small facility might be constructed that would not create duplication from the standpoint of an excess of capacity, but would result in duplication from the standpoint of an excessive investment in relation to efficiency and a multiplicity of physical properties.

Kentucky Utilities, supra, at 890.

KPC has requested a CPCN authorizing the replacement of all AMR meters for customers with AMI meters between 2021 and 2024, at a cost of approximately \$37 million dollars.

In a case seeking a CPCN for deployment of AMI infrastructure, it is incumbent on KPC to have demonstrated that the replacement of the current generation of meters with AMI would not constitute an “excessive investment in relation to productivity or efficiency” and would not create an “unnecessary multiplicity of physical properties.” The business case has not been made by KPC showing that advances in efficiency outweigh the cost of deployment and that the investment would not be excessive in light of gains in efficiency.

Instead, Mr. Blankenship responded on behalf of KPC to the lack of any objective evidence that the deployment of AMI meters would create benefits in excess of investment costs, by stating that “we did not do a cost-benefit analysis. Based...on the fact that – the obsolescence of the AMR system, we didn’t – we didn’t feel it was necessary based upon the obsolescence of the AMR system, lack of vendor support, and the – and the fact that 75 percent of our meters are at the end of their useful life.” Tr. Vol. IV pp. 1012-3. In truth, the testimony reflects that a meaningful consideration of alternatives to full and immediate deployment of AMI were not seriously considered by KPC.

Absent objective evidence quantifying the benefits to ratepayers and the utility of deployment of AMI meters, KPC has failed to satisfy the standards for issuance of a CPCN by demonstrating, *inter alia*, that the gains in efficiency⁵ make the investment appropriate rather than excessive relative to benefits.

Joint Intervenors respectfully request that the Commission deny the requested CPCN at this time, without prejudice, until KPC makes a CPCN filing that demonstrates that the benefits will outweigh the costs and that the investment is not excessive relative to those benefits. Absent adoption of programs allowing customers to meaningfully capture the potential benefits of AMI meters, which have not been proposed to date, AMI meters are of very limited value to ratepayers relative to the significant cost. Joint

⁵ Expected efficiency gains based on the KPC filings are speculative, at best, given (1) the lack of program offerings that would provide incentives to adjust behavior in response to the increase in data points on usage, and (2) the lack of objective evidence that the residential customers have elasticity of demand that would enable them to take advantage of usage information in order to achieve meaningful savings.

Intervenor witness Owen outlined what is missing in the KPC filings and what a filing sufficient to support issuance of a CPCN should contain:

AMI metering is a technology that enables a utility to improve its service offerings to customers potentially for many years. However, the company has not performed a cost benefit analysis of AMI deployment to quantify and measure whether the investment will be beneficial for customers. Instead, the utility relies on unquantified benefits that are far from certain to happen. In order to guard against the risk that these benefits do not materialize the Commission should not approve the AMI meter deployment unless:

- The Company puts forward detailed plans on future rate designs that will enable customers to modify their behavior to reduce their bill and lower their energy consumption;
- KPC develops and implement a PAYS® energy efficiency program that will enable customers to reduce their bill and lower their energy consumption without requiring contributions to program costs from other customers;
- KPC withdraws the proposed NMS II tariff and agrees to report the changes in DER development and distribution that can be attributed to AMI meters on an annual basis; and
- discontinue all connection and reconnection fees for AMI meters.

With the conditions I've described above the Commission should permit KPC to pursue its plan to deploy AMI meters. Absent these conditions, customers will pay millions of dollars with a peak of \$6,192,178 in year 5 compared to an annual reduction in meter costs of \$623,200. In such a scenario, AMI meters should be rejected. If AMI technology is to become the industry standard for KPC, it should adopt these recommendations to ensure the best outcome for its customers.

Owen, supra, pp. 63-4.

If the Commission does determine to grant the CPCN to KPC in the absence of a cost-benefit analysis demonstrating that quantified benefits to ratepayers exceed the investment costs to them, the proposed Grid Modernization Rider (“GMR”) should be rejected. The use of a “rider” proposing only one project under the rubric of “grid

modernization,” inappropriately imposes costs on ratepayers in advance of any demonstration that the new infrastructure is useful, and that the anticipated benefits used to justify the deployment have actually been achieved. Use of a GMR as a cost recovery mechanism is particularly questionable where, as here, the type and functionalities of the AMI infrastructure have not demonstrated, and where the anticipated benefits have not been quantified and may not materialize.

Joint Intervenors concur with and incorporate by reference as if fully set forth below, the arguments advanced by that a base rate case rather than the proposed rider is the proper mechanism for recovering the costs of AMI deployment. *Post-Hearing Brief of Walmart Inc.* pp. 3-4. The use of a GMR should be rejected for the reasons noted by Joint Intervenor witness Owen:

The Commission should reject the Grid Modernization Rider. KPC acknowledges that the benefits to customers will not accrue until the AMI meters are fully deployed. Additionally, as I described above, the benefits are speculative and unlikely to happen naturally – the company needs to take affirmative steps to develop DER, facilitate energy efficiency, and reduce costs. In the interim years, customers would be paying for parallel meter hardware and software. By allowing recovery through the GMR, rather than after a rate case when the meters are in-service and without the additional requirements I outlined above, the customers pay now for benefits that may or may not materialize later. Although there may be other ways, one important way to help customers realize the benefits sooner is to discontinue all connection and reconnection fees for AMI meters. These fees will no longer be necessary with AMI meters because it will be able to connect and reconnect customers remotely without sending an employee and truck to turn on service. Company witness Blankenship says it “does not plan at this time to charge a fee to reconnect AMI meters” in page 15 of his testimony. This is appropriate but should be made permanent and extended to all fees previously charged to customers for services that can be done remotely with AMI technology.

Owen, supra, at pp. 62-3.

Without venturing, at this juncture, an opinion on whether LG&E and Kentucky Utilities have made a showing sufficient to justify a CPCN for a proposed deployment of AMI meters through the territory of both utilities, the proposal for cost recovery through base rates after full deployment of AMI infrastructure, reflects the appropriate mechanism for cost recovery. “LG&E proposes to defer recovery of the costs related to its AMI investment until the entire project is fully implemented and placed into service, which is projected to be March 2026, and all benefits associated with the AMI implementation are available.... Recovery of actual implementation costs would be addressed in LG&E’s first base rate case following implementation.” *Application*, Case No. 2020-00350, at p. 14.

The use of a “rider” to allow KPC to charge ratepayers the full cost in a 4-year period of the deployment of an AMI infrastructure that has not yet been selected, that has not yet been determined to be a prudent investment relative to the cost, and which has unquantified benefits that may never materialize, is uniquely inappropriate. The ratepayers should not be used as a bank to fund the deployment of the AMI infrastructure on top of increases in basic service charges and energy costs occasioned by a loss of load and declining per capita usage.

CONCLUSION

KPC's business model, based on raising electricity rates for service for the poorest communities in Kentucky by 25% during a pandemic, is a failing model. At some point, a more sustainable model for the health of KPC must be devised, since the model of requiring the remaining captive customer based on paying increasingly higher rates for using less electricity, cannot be sustained. A focus on emerging trends of the energy

transition that would build customer loads - electric vehicles, facilitating fuel-switch from gas to high-efficiency heat pumps for space and water heating, and similar measures, could spur economic development, and increase energy use and revenue, without serial and punishing rate increases.

At this juncture, however, the burden being borne by residential and commercial customer classes can at least be lessened by the Commission (1) approving only a reasonable ROE, (2) rejecting a punitive NMS II tariff that fails to adequately consider costs and benefits, (3) rejecting without prejudice approval of the CPCN for AMI meters until it has been demonstrated that the investment is not excessive in view of the benefits, (4) denying cost recovery through the GMR rider, and (5) denying the proposed rate and maintaining the current basic service charge, are important steps in the right direction of balancing the interests of the shareholder and the ratepayers.

PRAYER FOR RELIEF

For the reasons stated herein, Joint Intervenors respectfully request that the Commission:

1. Reject the proposed NMS II Tariff;
2. Deny the requested rate increase and maintain the current basic service charge on residential customers;
3. Reject the proposed 10% ROE;
4. Deny without prejudice the CPCN for deployment of AMI meters until it is demonstrated that the investment is not excessive in light of benefits;

5. Reject the proposed Grid Modernization Rider and, if the Certificate of Public Convenience and Necessity is granted, require that any cost recovery be done in the context of a base rate case after full deployment of the AMI infrastructure; and
6. For 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 December 14, 2020; 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