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

MOTION OF KENTUCKY POWER COMPANY FOR REHEARING

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MOTION OF KENTUCKY POWER COMPANY FOR REHEARING

Introduction

Pursuant to KRS 278.400 and other applicable law, Kentucky Power Company ("Kentucky Power" or the "Company") respectfully submits this Motion for Rehearing of the Public Service Commission of Kentucky's ("Commission") May 14, 2021 Order (the "Order"). As set forth below, the Order is unreasonable, unlawful, and erroneous in several respects. The Order violates the Net Metering Act[1] by establishing Tariff NMS II rates that are insufficient to enable Kentucky Power to recover from Tariff NMS II customers all costs necessary to serve those customers, "including but not limited to fixed and demand-based costs."[2] Tariff NMS II's rates also are insufficient as a result of the Commission's elimination of the time-of-use netting periods proposed by the Company, and because the NMS II export rates the Commission established are unsupported by the record, mathematically incorrect, and overstated.

The Order also violates KRS 278.466(6) to the extent that it purports to grandfather the NMS II rate structure and netting period established in the Order. The Commission's creation of new avoided cost components in the Order, without notice or an opportunity for Kentucky Power to respond to those costs, was unreasonable and violated Kentucky Power's due process rights. Moreover, the new avoided cost components discriminate in favor of NMS II customers and enable those customers to be compensated twice for their renewable generation's non-power attributes.

There is no substantial evidence of record to support the Commission's determination that the addition of battery storage does not result in an increase in, and material change to, an

[1] Senate Bill 100, An Act Related to Net Metering, codified at KRS 278.465-278.468.
[2] KRS 278.466(5).

NMS II customer-generator's system's capacity. Finally, the Order's references to material and incidental increases in capacity are vague and should be quantified.

The Commission should grant rehearing to correct each of these errors.

Law and Argument

A. Standard for Rehearing.

KRS 278.400 authorizes "any party to the proceedings" to apply for rehearing of a Commission order within 20 days of service of the order. The Commission interprets the statute as "provid[ing] closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings."[3] The statute requires and the Commission expects "the parties to Commission proceedings to use reasonable diligence in the preparation and presentation of their cases and serves to prevent piecemeal litigation of issues."[4] The Commission nevertheless enjoys the discretion to grant rehearing to consider new arguments,[5] particularly where the argument could not reasonably have been raised before. In addition, rehearing will be granted when required to address any errors or omissions in the Commission's orders.[6] Each of these bases supports rehearing here.

[3] Order, *In the Matter of: Application Of Kentucky-American Water Company For A Certificate Of Public Convenience And Necessity Authorizing Construction Of The Northern Division Connection*, Case No. 2012-00096 at 4 (Ky. P.S.C. January 23, 2014).
[4] *Id*.
[5] Order, *In the Matter of: America's Tele-Network Corp.'s Alleged Violation of KRS 278.535*, Case No. 2000-00421 at 2 (Ky. P.S.C. March 23, 2001) (limiting scope of rehearing to new arguments raised in petition).
[6] Order, *In the Matter of: Application of Jessamine-South Elkhorn Water District For A Certificate Of Public Convenience And Necessity To Construct And Finance A Waterworks Improvement Project Pursuant To KRS 278.020 And 278.300*, Case No. 2012-00470 at 11 (Ky. P.S.C. January 3, 2014).

B. Kentucky Power's Motion for Rehearing.

1. The Commission's May 14, 2021 Order violates the Net Metering Act.

a. The May 14, 2021 Order establishes Tariff NMS II rates that are insufficient to satisfy KRS 278.466(5)'s requirements.

The Commission's Order rejects the Company's proposal to use two time-of-use netting periods (8 AM to 6 PM and 6 PM to 8 AM), and instead orders the Company to "continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS II consistent with the billing period netting period established in NMS I."[7]

KRS 278.466(5) provides:

> Using 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.[8]

Elimination of the netting periods proposed by Kentucky Power in favor of monthly netting by bill period fails to set rates that enable Kentucky Power to recover all costs necessary to serve NMS II customers, including but not limited to fixed and demand-based costs, from NMS II customers. It is undisputed that net metering customers rely completely and totally on the Company's distribution system during all times when the customer-generator's generation is not producing energy (half of a typical month).[9] Netting customer-generator output by billing period fails to account for that reality, and results in those customer-generators not contributing to the Company's costs to serve them. The Commission's flawed and inflated net export rate, discussed further in Section B.2, exacerbates this problem. The Commission's holding therefore fails to comply with the statutory requirements of KRS 278.466(5).

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[7] Order at 24-25.
[8] Emphasis supplied
[9] *See* Vaughan Rebuttal Test. at Ex. AEV-5.

As the Commission conceded, "time-of-use netting periods can more granularly match customer load to customer generation."[10] However, the Commission rejected the proposed two time-of-use netting periods in favor of netting by billing period on the grounds that "the periods that Kentucky Power selected are not based on cost causation."[11] As an initial matter, that finding conflicts with the Commission's own use of essentially the same time of use period (9 a.m. to 6 p.m.) in its avoided energy cost calculation just three pages later in the Order.[12] There, the Commission affirmatively agreed that it is necessary to utilize the hours that align with typical export in order "[t]o reflect cost causation . . ."[13] That time of use period cannot both reflect cost causation and also not be based on cost causation.

Moreover, by eliminating the Company's proposed netting periods in favor of netting by billing period, the Commission's Order deprives Kentucky Power of the ability to recover any costs from customer-generators participating in Tariff NMS II in many months, let alone "all costs necessary" to serve such customers as the Net Metering Act requires.[14] As Company Witness Vaughan testified, "the fixed monthly cost associated with connecting [a] customer to the distribution system [alone] is $35."[15] Using the Company's proposed netting periods and export rate would have resulted in the Company recovering some of the costs necessary to serve a customer-generator taking service under Tariff NMS II. Indeed, as Mr. Vaughan's Direct Testimony demonstrated, under the Company's netting proposal, the typical solar net metering residential customer with test year average usage of 1,240 kWh per month would have

[10] Order at 24.
[11] *Id.*
[12] *Id.* at 27.
[13] *Id.*
[14] KRS 278.466(5).
[15] Vaughan Direct Test. at 15.

approximately 639 kWh of billing energy, charged at the Tariff R.S. rate, and 783 kWh of excess generation, receiving the export rate, in a billing period.[16]

This would equate to the following billing, using the Company's proposed export rate:

R.S. Service Charge:	$17.50[17]
R.S. Energy Charge (693 kWh @ $0.11038)[18]	$70.53
N.M.S. II Excess Generation Credit (783 kWh @ $0.03553)[19]	($27.82)
Total Bill:	$60.21

Using the net export rate established in the May 14, 2021 Order (which rate is incorrect for the reasons discussed in Section B.2 below) for illustrative purposes only, the Company's cost recovery is reduced to less than $12:

R.S. Service Charge:	$17.50[20]
R.S. Energy Charge (693 kWh @ $0.11038)[21]	$70.53
N.M.S. II Excess Generation Credit (783 kWh @ $0.09746)[22]	($76.31)
Total Bill:	$11.72

And under the Commission's netting paradigm Kentucky Power receives virtually no fixed or other cost recovery. By netting over the billing period, the typical customer described above, who generates a total of 1,365 kWh in a typical month,[23] will have no billing energy and 125 kWh of excess generation, resulting in cost recovery of only $5.[24]

R.S. Service Charge:	$17.50[25]
R.S. Energy Charge (0 kWh @ $0.11038)[26]	$0
N.M.S. II Excess Generation Credit (125 kWh @ $0.09746)[27]	($12.18)
Total Bill:	$5.32

[16] Vaughan Direct Test. at 25-26, Ex. AEV-3.
[17] See P.S.C. Ky. No. 12 Original Sheet No. 6-1.
[18] *Id.*
[19] Vaughan Rebuttal Test. at R34, Ex. AEV-R5.
[20] See P.S.C. Ky. No. 12 Original Sheet No. 6-1.
[21] *Id.*
[22] *See* Order at 3.
[23] *See* Vaughan Direct Testimony at Ex. AEV-3, "Typical NMS Solar System" Column at total line.
[24] *Id.* (1,365 kWh – 1,240 kWh = 125 kWh).
[25] See P.S.C. Ky. No. 12 Original Sheet No. 6-1.
[26] *Id.*
[27] *See* Order at 3.

Simply modifying the export rate, without correcting the netting periods, does not resolve this issue. Indeed, even were the Commission appropriately to accept Kentucky Power's corrections to the export rate described below in Section B.2.c and reduce the export rate to $0.06359, the Company still would be unable to recover even its fixed costs of serving NMS II customers:

R.S. Service Charge:	$17.50[28]
R.S. Energy Charge (0 kWh @ $0.11038)[29]	$0
N.M.S. II Excess Generation Credit (125 kWh @ $0.06359)[30]	($7.95)
Total Bill:	$9.55

Alternatively, accepting the Company's corrections to the net export rate and retaining the Company's appropriate two time-of-use netting periods, although still not sufficient to recover all of the Company's costs associated with serving Tariff NMS II customers, would enable the Company to recover a more reasonable level of fixed, demand-based and other costs caused by those customers:

R.S. Service Charge:	$17.50[31]
R.S. Energy Charge (693 kWh @ $0.11038)[32]	$70.53
N.M.S. II Excess Generation Credit (783 kWh @ $0.06359)[33]	($49.79)
Total Bill:	$38.24

The Commission's Order setting the netting period as the entire billing period results in the Company not being able to recover its costs necessary to serve NMS II customers, and the Order therefore violates KRS 278.466(5). The Commission should grant rehearing to correct this error.

[28] See P.S.C. Ky. No. 12 Original Sheet No. 6-1.
[29] *Id.*
[30] *See* Exhibit B attached hereto.
[31] See P.S.C. Ky. No. 12 Original Sheet No. 6-1.
[32] *Id.*
[33] *See* Exhibit B.

b. KRS 278.466(6) does not authorize the Commission to grandfather NMS II customers' rate structure and netting period.

(i) The Commission should grant rehearing to clarify its Order regarding the legacy rights of NMS II customers.

The Commission's Order holds that "eligible customer-generators who take service under NMS II should be allowed to take service under the current two-part rate structure and netting period for 25 years."[34] The date of the "initial net metering order by the commission in accordance with … [KRS 278.466(3)]" was May 14, 2021.[35] There were no customers taking service under Tariff NMS II on or before May 14, 2021.[36] Kentucky Power thus requests that the Commission grant rehearing and amend its May 14, 2021 Order by deleting the quoted language. Alternatively, the Company requests that the Commission grant rehearing and amend the quoted provision to provide: "eligible customer-generators ~~who take~~ *taking* service under NMS II *prior to May 14, 2021* should be allowed to take service under the current two-part rate structure and netting period for 25 years."

The Commission's Order indicated it was granting legacy status to NMS II customers "[i]n light of the provision established by the legislature for existing net metering customers in KRS 278.466(6)…"[37] In particular, the Commission indicated "the legislature determined that there should be some allowance for customer expectation of and reliance on existing rate structures when the eligible generating facility was placed in service."[38] But by their express terms, the legacy provisions of KRS 278.466(6) apply only to those eligible customer generators taking service prior to the Commission's May 14, 2021 Order:

> For an eligible electric generating facility ***in service prior to the effective date of the initial net metering order by the commission in accordance with subsection***

[34] Order at 42-43.
[35] *Id.* at 45.
[36] Affidavit of Alex E. Vaughan, ¶ 4 (attached as **EXHIBIT A**).
[37] Order at 42.
[38] *Id.* at 43.

> ***(3) of this section***, the net metering tariff provisions in place when the eligible customer-generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless of whether the premises are sold or conveyed during that twenty-five (25) year period. For any eligible customer-generator to whom this subsection applies, each net metering contract or tariff under which the customer takes service shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.[39]

Nothing in the language of KRS 278.466 purports to extend the legacy rights of eligible customer generating facilities placed in service after the "effective date of the initial net metering order" or May 14, 2021 in the case of Kentucky Power.

The Commission's Order, unless clarified as described above, introduces unnecessary complexity and practical problems in the administration of Tariff NMS II. If each new customer is grandfathered under the rate structure existing at the time the customer begins taking service under NMS II, the Company will be required to track and bill each new NMS II customer for differing calendar periods (and perhaps under different rate structures). For example, if NMS II customer "A's" facility goes into service on June 1, 2021, and NMS II customer "B's" facility goes into service on December 1, 2024, then Customer "A's" grandfather period will end June 1, 2046 while Customer B's grandfather period will continue December 1, 2049. If the Company adds 100 new NMS II customers, then it will be required to track and bill each of those 100 new customers for different calendar periods and potentially under different rate structures. The General Assembly clearly sought to avoid this practical administrative nightmare, which benefits no one, by tying the grandfather period to the "effective date of the ***initial*** net metering order"[40]

[39] KRS 278.466(6) (emphasis supplied).
[40] *Id*. (emphasis supplied).

(ii) Any effort to extend legacy rights to eligible customer generators not in service prior to May 14, 2021 would violate Sections 27 and 28 of the Kentucky Constitution.

To the extent the Commission declines to grant rehearing to delete or amend the quoted language as described above, or to the extent the quoted language is intended to apply to customers taking service under NMS II beginning on or after May 14, 2021, the Commission's Order is contrary to KRS 278.466(6) and thus purports to amend a statute in violation of Sections 27 and 28 of the Constitution of Kentucky.

Under Kentucky's Constitution, the wall between the three coordinate branches of government is higher and less easily breached than that in other states and the federal system.[41] In *Sibert v. Garrett*, for example, the then Kentucky Court of Appeals explained:

> Perhaps no state forming a part of the national government of the United States has a constitution whose language more emphatically separates and perpetuates what might be termed the American tripod form of government than does … [the Kentucky] Constitution.[42]

The Kentucky Constitution establishes three distinct branches of government—the executive, legislative, and judicial branches—and prohibits any "person or collection of persons" in one of the three branches of government from exercising "any power properly belonging to either of the others," unless expressly authorized by the Constitution.[43] The Kentucky Supreme Court has characterized the Kentucky Constitution's separation of powers provisions as a "double-barreled, positive negative approach."[44] That is, "our present constitution contains explicit provisions which, on the one hand, *mandate* separation among the three branches of government, and on the

[41] *Legislative Research Commission v. Brown*, 664 S.W.2d 907, 912-913 (Ky. 1984).
[42] 246 S.W. 455, 457 (Ky. App. 1922).
[43] Ky. Const. §§ 27, 28.
[44] *LRC v. Brown*, 664 S.W.2d at 912.

other hand, specifically *prohibit* incursion of one branch of government into the powers and functions of the others."[45]

The division under Kentucky's 1891 Constitution of governmental power among three separate and equal branches is not a formality to be observed only in its breach. Rather, it is to be "strictly construed."[46] Thus, separation of powers is not only "fundamental to Kentucky's tripartite system of government," but its observance, "is, to a very great extent, the measure of … [a people's] ability to self-govern."[47]

The Commission, as part of the Executive Branch, is prohibited from exercising the authority of Legislative Branch. The General Assembly alone is authorized to enact laws under the Kentucky Constitution. Administrative agencies are statutory creatures,[48] and as such, any exercise of authority by an agency must be grounded in statute, and specifically as to the Commission, the "legislative grant of power to regulate rates will be strictly construed and will neither be interpreted by implication nor inference."[49] Administrative bodies may not add to or pare from the statutory grant of authority,[50] and the agency is "authorized only to administer the law as written."[51] Because the Commission's Order construing KRS 278.466(6) adds to and modifies the statute by extending the grandfather period beyond May 14, 2021, the Order contravenes Sections 27 and 28 of the Kentucky Constitution.

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[45] *Id*. (emphasis in original).
[46] *Id*.
[47] *Id*. at 911.
[48] *Dep't for Natural Resources and Envtl. Protection v Stearns Coal & Lumber Co.*, 563 S.W.2d 471, 473 (Ky. 1978).
[49] *South Cent. Bell Telephone Co. v. Utility Regulatory Comm'n,* 637 S.W.2d 649, 653 (Ky. 1982).
[50] *Camera Center, Inc. v. Revenue Cabinet*, 34 S.W.3d 39, 41 (Ky. 2000) ("the agency can not by its rules and regulations, amend, alter, enlarge or limit the terms of legislative enactment."); *GTE v. Revenue Cabinet*, 889 S.W.2d 788, 792 (Ky. 1994); *Portwood v. Falls City Brewing Co.*, 318 S.W.2d 535, 537 (Ky. 1958); *Robertson v. Schein*, 204 S.W.2d 954, 957-58 (Ky. 1947).
[51] *Johnson v. Correll*, 332 S.W.2d 843, 845 (Ky. 1960).

Further, the Commission's Order exceeds its statutory authority. "[The Public Service Commission] is not a lawmaking body. Its powers and duties are administrative only."[52] And, "[a]dministrative authorities must strictly adhere to the standards, policies, and limitations provided in the statutes vesting power in them."[53]

Specifically as to the powers of the Public Service Commission, the Kentucky Supreme Court has made clear:

> [I]t is clear that the legislative grant of power to regulate rates will be strictly construed and will neither be interpreted by implication nor inference. It will be strictly construed. 73 C.J.S., Public Utilities, § 41, p. 1080. In fixing rates, the Commission *must* give effect to all factors which are prescribed by the legislative body, but may not act on a matter which the legislature has not established, *id.*, Sec. 41, (c)(aa) p. 1093. We have held that the Commission's powers are purely statutory. *City of Olive Hill v. Public Service Commission*, 305 Ky. 249, 203 S.W.2d 68 (1947). When a statute prescribes a precise procedure, an administrative agency may not add to such provision. *Union Light, Heat & Power Co. v. Public Service Commission*, Ky., 271 S.W.2d 361 (1954).[54]

The statute provides legacy protection only to NMS customers in service prior to May 14, 2021. The statute does not vest the Commission with the authority to grandfather current and future NMS II customers under the two-part rate structure established by the Order for 25 years, and the Commission may not add or read-in such authority. Any attempt to create or exercise such power exceeds the Commission's statutory grant of authority. Further, it is "Kentucky's longstanding rule that, where reasonable doubt exists concerning the proper scope of an administrative agency's authority, it should be resolved against the agency."[55] The courts "have

[52] *Smith v. Raceland*, 80 S.W.2d 827, 828 (Ky. 1935).
[53] *Henry v. Parrish*, 211 S.W.2d 418, 422 (Ky. 1948).
[54] *S. Cent. Bell Tel. Co. v. Util. Regulatory Com*., 637 S.W.2d 649, 653 (Ky. 1982) (emphasis original).
[55] *Bullitt Fiscal Court v. Bullitt Cty. Bd. of Health*, 434 S.W.3d 29, 39 (Ky. 2014) (*citing Parrish*, 211 S.W.2d at 422 *citing Bd. of Educ. of City of Newport v. Scott*, 224 S.W. 680, 681 (Ky. 1920)); *United Sign, Ltd. v. Commonwealth*, 44 S.W.3d 794, 798 (Ky. App. 2000).

the ultimate responsibility in matters of statutory construction and the reviewing court is not bound by an administrative body's interpretation of a statute."[56]

Therefore, because the Commission's Order exceeds its authority under the Kentucky Constitution, the legislative authority granted in KRS 278.466(6), and considering the impracticalities of the Commission's grant of legacy protections for existing and future NMS II customers, the Company respectfully requests the Commission grant rehearing to correct this error. If the Company has misinterpreted the Commission's Order on this issue, the Company respectfully requests that the Commission clarify its holding on rehearing.

2. The May 14, 2021 Order's avoided cost analysis is unsupported by the record and is erroneous.

The avoided cost analysis and resulting export rates contained in the Commission's May 14, 2021 Order are unreasonable, lack any basis in the record in this proceeding, and are in many instances mathematically incorrect and overstated.

a. The Commission deprived the Company of due process and erred in creating new avoided cost components without notice or any evidentiary basis to do so.

Kentucky Power did not have an opportunity to address many of the issues and avoided cost components the Commission introduced for the first time in its Order. Indeed, although the Company expressly requested in its February 2, 2021 motion for rehearing that the Commission specify the type of study or evidence the Commission believed it required to establish NMS II rates,[57] the Commission declined that request.[58] The Commission itself expressly concedes that there was no record in this case to support numerous of the avoided cost elements it created:

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[56] *Commonwealth v. RiverValley Behavioral Health*, 465 S.W.3d 460, 468 (Ky. App. 2014) (*citing Board of Educ. of Fayette County v. Hurley-Richards,* 396 S.W.3d 879, 885-886 (Ky. 2013) and *Delta Air Lines, Inc. v. Commonwealth, Revenue Cabinet,* 689 S.W.2d 14, 20 (Ky. 1985)).
[57] Kentucky Power Mot. for Rehearing at 44 (Feb. 2, 2021).
[58] Order at 26-27 (Feb. 22, 2021).

> While the record in this case does not offer quantitative evaluations of benefits and costs, the parties' qualitative arguments demonstrate the need to evaluate a broad range of known or reasonably expected measurable benefits of eligible customer-generators, leading the Commission to incorporate additional avoided cost components beyond those proposed by Kentucky Power.[59]

The Commission's reliance upon extra-record information, about which the parties had no notice and which the parties had no ability to test or refute, was inappropriate and violated Kentucky Power's due process rights.[60] The Commission should grant rehearing to permit Kentucky Power to present evidence responding to, and develop a record demonstrating the inaccuracy of, the Commission's new, novel, and unsupported avoided distribution capacity, carbon, and environmental compliance cost elements.

b. The Commission's Order enables NMS II customers to be double compensated for their generation's non-power attributes.

In establishing avoided carbon and environmental compliance cost components, the Commission is requiring the Company to compensate NMS II customers for the environmental, social, and other non-power attributes of their renewable generation. NMS II customers already have the ability to obtain compensation for those attributes of their generation by monetizing the renewable energy certificates ("RECs") associated with their renewable generations. The Commission's Order thus enables NMS II customer-generators to be compensated twice for those attributes. This result is discriminatory as to the Company's other customers with renewable on-site generation, such as those taking service under Kentucky Power's COGEN/SPP tariffs, which do not have the same ability to be paid twice for their RECs.

[59] Order at 22-23.
[60] *Util. Regulatory Com'n v. Ky. Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982) ("[N]o hearing in the constitutional sense exists where a party does not know what evidence is considered and is not given an opportunity to test, explain or refute.").

On rehearing, the Commission should eliminate the environmental compliance and avoided carbon cost components of the NMS II export rate. Alternatively, the Commission could retain those cost components, but require customers participating in Tariff NMS II to transfer the RECs generated by their net metered facilities to Kentucky Power. Kentucky Power could then monetize the RECs to offset in part the subsidy non-net metering customers will continue to pay under the Commission's NMS II tariff construct.

Regardless, given the Commission's recognition in this proceeding of the economic value associated with renewable generation, the Company trusts that the Commission will value the avoided carbon and environmental compliance benefits associated with other renewable generation proposals, including those the Company may pursue in the future, consistently with the value it is placing on renewable distributed generation in this case.

c. The Commission's avoided generation capacity, transmission capacity, and distribution capacity cost components are mathematically flawed and overstated.

The Commission's calculation of avoided generation capacity, transmission capacity, and distribution capacity is incorrect due to mathematical errors common to all three avoided cost component calculations. In its computation of each of these avoided cost components, the Commission reduced the Company's estimate of total annual MWh output from solar plant from 38,460 to 16,292 (using residential NMS II pricing for this illustration).[61] That number serves as the denominator in the Commission's calculation of the avoided generation capacity, transmission capacity, and distribution capacity rates. The 16,292 MWh annual export estimate was calculated by reducing the Company's 38,460 MWh estimate by (1) a 0.8635 capacity factor

[61] *See* Order at Modified Exhibit AEV-R5 NMS II Updated Avoided Cost Rate Residential.

adjustment and (2) a 49.06% residential export adjustment.[62] The Commission failed, however, to commensurately reduce the output level of the solar peak reduction MW by the same adjustments, as those same levels of average peak reductions cannot occur at the lower estimated levels of generation the Commission utilized. Thus, the avoided cost components at issue reflect overstated generation output relative to the lower estimated solar plant output that the Commission's analysis utilized. This calculation error resulted in the avoided cost rates at issue being artificially inflated by approximately 230%.

The described error affects not only the avoided generation capacity and transmission capacity cost components, as directly reflected in the Commission's modification to Company Witness Vaughan's Exhibit AEV-R5, but also to the avoided distribution capacity rate, which the Commission calculated by multiplying the flawed avoided transmission capacity rate by two scaling factors.[63] **EXHIBIT B**[64] to this motion provides a workpaper prepared by Company Witness Vaughan which addresses and corrects this error. Correction of the calculation error as set forth in Exhibit B results in the following residential and commercial export rates:

Residential NMS II Export Rate		
	5/14/21 Order	**Corrected**
Energy	$0.03893	$0.03893
Ancillary Services	$0.00063	$0.00063
Generation Capacity	$0.02816	**$0.01193**
Transmission Capacity	$0.01245	**$0.00286**
Distribution Capacity	$0.01046	**$0.00240**
Carbon Cost	$0.00578	$0.00578
Environmental Compliance Cost	$0.00105	$0.00105
Job Benefits	-	-
NMS Price for Excess Gen	$0.09746	**$0.06359**

[62] *Id.* 38,460*0.8635*0.4906 = 16,292. The Commission utilized different scaling factors for commercial customers, resulting 17,874 MWh of total annual output for commercial facilities. *See* Order at Modified Exhibit AEV-R5 NMS II Updated Avoided Cost Rate for Commercial.
[63] Order at 34.
[64] *See* Vaughan Aff., ¶¶ 5-7 (attached as Exhibit A).

Commercial NMS II Export Rate		
	5/14/21 Order	**Corrected**
Energy	$0.03893	$0.03893
Ancillary Services	$0.00063	$0.00063
Generation Capacity	$0.03549	**$0.01649**
Transmission Capacity	$0.00798	**$0.00371**
Distribution Capacity	$0.00671	**$0.00312**
Carbon Cost	$0.00578	$0.00578
Environmental Compliance Cost	$0.00105	$0.00105
Job Benefits	-	-
NMS Price for Excess Gen	$0.09657	**$0.06971**

At a minimum, the Commission should correct this mathematical error on rehearing and update Tariff NMS II's residential and commercial export rates to $0.06359 and $0.06971.[65]

3. The Commission erred in finding that the addition of battery storage does not increase the capacity of an eligible generating facility.

The Commission found that "because the addition of battery storage does not increase the capacity of an eligible generating facility, . . . adding batter[y] storage to an eligible generating facility should not trigger a change in NMS I legacy status."[66] However, as Company Witness West testified, "[w]hen the customer is adding battery storage like that, they're adding capacity to their system similar to if they were adding solar panels in addition to what they already have. When adding capacity happens, we need to re-look at that study again that we did. So it would be a material change to their system."[67]

No other party refuted Kentucky Power's testimony that adding battery storage results in an increase in capacity and therefore a material change to their system, and no other record

[65] *See e.g. Ky. Power Co. v. Energy Regulatory Com'n*, 623 S.W.2d 904, 907 (Ky. 1981) (affirming order requiring remand for rehearing on whether proposed rates will produce the revenues granted).
[66] Order at 44.
[67] April 6, 2021 Video Hearing Record ("VR1") at 4:22:00 PM.

evidence supports the Commission's converse finding. Therefore, the Commission should grant rehearing to correct its finding based on the evidence of record.

4. The Commission should clarify and quantify the terms "material increase" and "incidental increase" in capacity.

The Commission held that if a current NMS I customer's "modification of their eligible generating facility results in a material increase[] in capacity, then that customer will no longer be eligible to take service under the NMS I tariff."[68] Conversely, it held that "replacement of eligible generating facilities in the ordinary course that result in only an incidental increase in capacity should not trigger a change in NMS I legacy status."[69] The Commission did not define the terms "material" or "incidental" increase.

Kentucky Power maintains that any increase in power generation or stored power of the generating facility is a material increase. This is so because any increase without proper review of connected equipment could result in degradation of Company-owned equipment, which in turn could result in reduced performance, ability to serve customers, damage to property, or injury to persons or animals. The Company therefore requests that the Commission grant rehearing to clarify that *any* increase in capacity results in a material increase in capacity.

Further, and without regard to how the addition of battery storage is treated, the terms "material increase" and "incidental increase" are at best imprecise, leaving the Company and customers alike to guess at their meanings. The Company thus respectfully requests that the Commission grant rehearing to quantify what constitutes a "material increase" (and conversely what constitutes an "incidental increase"), whether in terms of a threshold percentage increase or kilowatt increase in capacity. Moreover, because any change in equipment or capacity can

[68] Order at 44.
[69] *Id.*

require the Company to modify or upgrade its system, the Commission's quantification should make clear that any increase in capacity or modification that requires the Company to make distribution system upgrades is a "material increase". Such a quantification will increase transparency and reduce any confusion on the part of the customer and the Company when making determinations about the loss or continuation of legacy status for NMS I customers. Additionally, because the Company can determine whether it needs to upgrade or modify its system only if it is aware of changes to the customer's premises, including the customer's eligible electric generating facility, the Commission should clarify on rehearing that customers must submit a new interconnection application fully describing all electrical and storage equipment to be interconnected any time a change or addition is made to the customer-generator's system.

The electrons do not "care" whether a customer is taking service under Tariff NMS or Tariff NMS II. They do, however, "care" whether a meter base is not rated appropriately, and whether a transformer is undersized. For example, the Company still has numerous customers on 10 kVA transformers. While 5 kW may not sound like a significant increase in capacity, if a customer already is using 100% of a 10 kVA service transformer's capacity, pushing that system to 15 kW could mean the transformer is overloaded by 50%, which poses the risk of a serious hazard.

Unless the Company is aware of the equipment to be connected to its system it cannot meet its statutory and regulatory obligation to provide safe, adequate, efficient, and reasonable service.[70] Similarly, the Company cannot plan, design, or build distribution facilities based on unknown conditions and speculation regarding the size and potential of customer-generators.

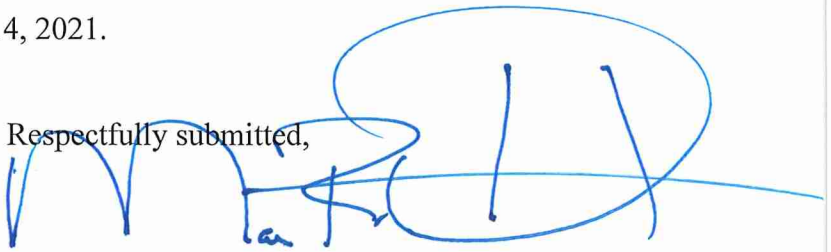
[70] KRS 278.030(2).

For these reasons, it is vital that customers at least *notify* the Company of *any* increase in system capacity or modification of the equipment interconnected, regardless of whether the increase or modification is deemed "material." Further, customers should be required to pay the costs of any additional system impact studies needed to evaluate such changes to their system.

Conclusion

For the foregoing reasons, Kentucky Power Company respectfully submits that the Commission should grant rehearing to address, correct, or clarify each of the issues identified above. The Company further requests that any order granting rehearing and amending the May 14, 2021 Order be effective retroactive to May 14, 2021.

Respectfully submitted,



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