

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)
INTERCONNECTION AND NET METERING) CASE NO. 2020-00302
GUIDELINES)

ATTORNEY GENERAL'S BRIEF

The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“Attorney General”), submits the following Brief to the Public Service Commission (“Commission”) in the above-styled matter as requested by the Commission in its Order of February 16, 2021. Specifically, the February 16, 2021 Order called for the parties to file a written brief, “discussing current and reasonably anticipated issues and concerns identified by each party regarding net metering interconnection guidelines, and, separately, current and reasonably anticipated concerns regarding Federal Regulatory Energy Commission (“FERC”) Order No. 2222.”

The Attorney General anticipates that the following issues will arise during this hearing.

CURRENT AND REASONABLY ANTICIPATED ISSUES REGARDING NET-METERING AND INTERCONNECTION GUIDELINES

The Commission should update the Net-Metering and Interconnection Guidelines (hereinafter “NMIG”) established in Case No. 2008-00169¹ to conform

¹ Administrative Case No. 2008-00169, *Development of Guidelines for Interconnection and Net Metering for Certain Generators with Capacity Up to Thirty Kilowatts* (Ky. PSC Jan. 8, 2009).

those requirements to amendments that have been made to KRS 278.465 through KRS 278.476.

First, the maximum rated capacity for eligible electric generating facilities has increased from thirty kilowatts to forty-five kilowatts, necessitating amendment of the section labeled availability at page 1 of the guidelines. Second, the sections of the NMIG related to metering and billing should continue to allow flexibility based on the differences between and among utilities. Third, the application process between the customer and the utility should allow for the utility to employ its expertise to ensure that the proposed system can operate safely for the benefit of the customer and the grid. Fourth, the NMIG should be revised at pages 3 - 9 to account for changes in technology that have occurred since 2008, including appropriate consideration of the framework adopted by the National Institute of the Standards and Technology (“NIST”). The NIST framework should be considered generally and specifically with respect to cybersecurity issues. Fifth, the NMIG should provide clarity on issues of the relationship between Advanced Metering Infrastructure (“AMI”) and net-metering. While utilities should maintain the flexibility to adopt different approaches that fit the circumstances of their capabilities and the needs of their customers, uniformity should be pursued for similarly-situated customers where possible.

CURRENT AND REASONABLY ANTICIPATED CONCERNS
REGARDING FERC ORDER NO. 2222

FERC Order No. 2222 provides a general regulatory framework for

Distributed Energy Resources (“DER”) to provide power to the grid. Specifically, the Order requires independent system operators (“ISOs”) and regional transmission organizations (“RTOs”) to develop rules that allow DER aggregators to participate in regional markets. Further, the subsequently-issued FERC Order No. 2222(a) added that heterogeneous DER aggregations, which include demand response, may not be excluded from the wholesale market based on a state opt-out. Inasmuch as FERC maintains exclusive jurisdiction over wholesale power markets, the Commission might be limited in its ability to affect FERC’s decisions. However, the Commission maintains a significant role in determining the practical impact of those decisions in Kentucky.

In Case No. 2017-00129, the Commission determined that, while the Commission did not assert, “any jurisdiction over third parties involved in aggregating or bidding EER in PJM’s markets... Any Kentucky retail customer that participates directly or indirectly in any wholesale electric market in the absence of authorization under a tariff or contract on file with the Commission is in violation of Kentucky statutes and Commission Orders and is subject to termination of service by its retail electric supplier under 807 KAR 5:006(15).”² At first glance, it does not appear that FERC Order 2222 and the Commission’s Order in Case No. 2017-00129 are in direct conflict. However, as a practical matter, the Commission’s decision may have the effect of limiting the participation of Kentucky retail customers who wish to

² Case No. 2017-00129, *Application of East Kentucky Power Cooperative, Inc. for a Declaratory Order Confirming the Effect of Kentucky Law and Commission Precedent on Retail Electric Customers’ Participation in Wholesale Electric Markets*, Order of June 6, 2017.

participate in the wholesale market through an aggregator. FERC Order No. 2222(a) only complicates this analysis further. Thus, the state regulatory treatment of those retail customers who wish to take advantage of FERC's expansion of access to the wholesale market will present an important issue for the Commission to consider and resolve.

Additionally, the Attorney General notes that FERC Order 2222 makes clear that the Commission remains responsible for the interconnection of individual DER aggregators.

As a general matter, and to the extent the Commission decides it is authorized by Kentucky law, the Attorney General urges the Commission to use all tools at its disposal to ensure that the emergence and acceptance of DER, as a viable source of wholesale power, does not create an undue risk to the reliability of power purchased for Kentucky ratepayers. Virtual power plants and demand response initiatives, while valuable, cannot match the reliability of traditional baseload resources. Renewable generation and aggregated demand response fails to provide a reliable baseload generation in certain circumstances, including severe weather events, as seen in the recent public examples of Texas and California. Ratepayers in Texas can attest that the failure of renewable generation contributed greatly to the outages experienced there.³ Ratepayers in California can attest that overreliance on

³ What Went Wrong With Texas' Power Failure And How To Fix It, <https://today.tamu.edu/2021/02/20/what-went-wrong-with-texas-power-failure-and-how-to-fix-it/> (accessed February 23, 2021); Texas Spins Into the Wind, <https://www.wsj.com/articles/texas-spins-into-the-wind-11613605698> (accessed February 23, 2021).

renewable generation and poor planning related thereto contributed to rolling blackouts there.⁴ Therefore, to the extent the Commission determines DER is a viable source of wholesale power for Kentucky ratepayers and to the extent the Commission authority to impact questions of the resource mix utilized by Kentucky utilities, the Attorney General requests that questions of reliability be given appropriate weight.

CONCLUSION

The Attorney General requests that the Commission consider the issues referenced above as it proceeds with this matter.

⁴ California releases final root cause analysis of August rolling blackouts, <https://www.utilitydive.com/news/california-releases-final-root-cause-analysis-of-august-rolling-blackouts/593436/> (accessed February 23, 2021); Why California's Climate Policies Are Causing Electricity Blackouts, <https://www.forbes.com/sites/michaelshellenberger/2020/08/15/why-californias-climate-policies-are-causing-electricity-black-outs/?sh=3c1e15ac1591> (accessed April 12, 2021).

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL

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Certificate of Service and Filing

Pursuant to the Commission's Orders dated March 16, 2020 and March 24, 2020, and in accord with all other applicable law, Counsel certifies that, on April 19, 2021, a copy of the forgoing was filed with the Commission and there are currently no parties that the Commission has excused from participation by electronic means. A physical copy of the filing will be submitted to the Commission once the State of Emergency has ceased.

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Assistant Attorney General