

1 **COMMONWEALTH OF KENTUCKY**
2 **BEFORE THE PUBLIC SERVICE COMMISSION**

3
4
5 **In the Matter of:**

6
7 **ELECTRONIC INVESTIGATION OF)**
8 **INTERCONNECTION AND NET)** **CASE NO. 2020-00302**
9 **METERING GUIDELINES)**

10
11
12 **JOINT BRIEF OF BIG RIVERS ELECTRIC CORPORATION AND ITS**
13 **MEMBERS**
14

15 Big Rivers Electric Corporation (“*Big Rivers*”), by counsel, and on behalf of
16 itself and its three member distribution cooperatives, Jackson Purchase Energy
17 Corporation (“*Jackson Purchase*”), Kenergy Corp. (“*Kenergy*”), and Meade County
18 Rural Electric Cooperative Corporation (“*Meade County RECC*”) (collectively, the
19 “*Members*”) respectfully submit this brief in response to the Public Service
20 Commission’s (the “*Commission*”) Order dated March 4, 2021, which directed each
21 party to file “a written brief setting forth current and reasonably anticipated issues
22 and concerns...regarding net metering interconnection guidelines and [Federal
23 Regulatory Energy Commission (“*FERC*”) Order No. 2222.”¹

24
25 **I. NET METERING GUIDELINES**

26 This proceeding was established “to investigate and potentially modify net
27 metering guidelines...and to address the enactment of Senate Bill 100 [2019

¹ Order dated March 4, 2021, at p. 2.

1 Regular Session], An Act Related to Net Metering (the “*Net Metering Act*”),” which
2 amended “the existing statutory requirements for the net metering of electricity,”
3 codified in KRS 278.465 - KRS 278.467.²

4 The existing net metering guidelines adopted by the Commission in Case No.
5 2008-00169³ adequately balance the utilities’ needs for safety and reliability with
6 enabling customers wishing to participate in net metering to do so. As such, Big
7 Rivers and its Members are not proposing any specific changes to the existing
8 guidelines at this time.

9 If other parties propose changes to the existing guidelines, Big Rivers and its
10 Members recommend that the Commission implement a collaborative process,
11 similar to the process utilized in Case No. 2008-00169, to address the parties’
12 proposals so as to maintain the balance in the existing guidelines between net
13 metering customers, the utility, and non-participating customers. More specifically,
14 consistent with KRS 278.466, any changes to the existing net metering guidelines
15 should ensure that the safety of customers and utility workers are protected, the net
16 metering customer does not damage or interfere with the reliability of the electric
17 system, and that all costs caused by a net metering customer are recovered from
18 that customer. Additionally, the Commission should maintain the flexibility
19 inherent in the existing guidelines to allow for differences in each utility’s operating

² Order dated September 24, 2020, at p. 1.

³ *In the Matter of: Interconnection and Net Metering Guidelines for Retail Electric Suppliers and Qualifying Customer-Owned Generators*, Administrative Case No. 2008-00169, Order (Jan. 8, 2009).

1 environment, metering systems, and customer base, as the Commission did in
2 adopting the existing guidelines.

3 Any changes to the existing guidelines should also continue to enable a
4 utility, in light of ever-changing technology, to require net metering customers
5 comply with all applicable safety and power quality standards, including the
6 National Electric Code (“*NEC*”) and standards established by the Institute of
7 Electrical and Electronics Engineers (“*IEEE*”) and accredited testing laboratories
8 such as Underwriters Laboratories (“*UL*”). For example, as solar technology has
9 developed, new standards have been developed, including NEC Article 690 – “Solar
10 Photovoltaic (PV) Systems,” which provides standards for grid-tied solar PV
11 systems, including array circuits, inverters, and controllers. It is necessary for a
12 utility to be able to require compliance with new standards, and to adopt rules and
13 interconnection standards consistent with those standards, to keep up with
14 innovations in the renewable energy field.

15 Finally, the rates to be paid to a net metering customer for excess generation
16 should not be addressed in this proceeding, and should instead be addressed in
17 utility-specific rate-making proceedings pursuant to KRS 278.466(3) and (5). To the
18 extent other parties recommend that this proceeding should address the rates paid
19 to net metering customers, Big Rivers and its Members continue to support and
20 adopt the position of the Kentucky Electric Cooperatives in Case No. 2019-00256
21 that the rates paid to net metering customers for excess generation should reflect a
22 utility’s avoided costs (or the applicable generation and transmission cooperative’s

1 avoided costs for the distribution cooperatives), consistent with cooperatives’
2 existing rates for PURPA-qualifying facilities.⁴

3

4 **II. FERC ORDER NO. 2222**

5 On February 8, 2021, the Commission entered FERC Order No. 2222⁵
6 (“*FERC Order 2222*” or the “*Order*”) into the record of this proceeding. FERC Order
7 2222 was created in an effort to “remove barriers to the participation of distributed
8 energy resource aggregations in the capacity, energy, and ancillary service markets
9 operated by [Regional Transmission Organizations (“*RTOs*”) and Independent
10 System Operators (“*ISOs*”).”⁶

11 ***a. FERC Order 2222 is conceptually dissimilar to net metering***

12 Of first note, FERC Order 2222 provides rules for distributed energy resource
13 (“*DER*”) aggregators to engage in third-party transactions with RTOs/ISOs,⁷ while
14 net metering concerns a first-party contractual relationship between a retail
15 provider and a customer-generator.

⁴ See *In the Matter of: Electronic Consideration of the Implementation of the Net Metering Act*, P.S.C. Case No. 2019-00256, Comments of Kentucky Association of Electric Cooperatives, Inc. (Oct. 15, 2019), at p 4.

⁵ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (Issued September 17, 2020).

⁶ FERC Order 2222 at ¶ 366.

⁷ *Id.* at ¶ 43 (“We further clarify that we are only exercising jurisdiction in this final rule over the sales by distributed energy resource aggregators into the RTO/ISO markets”).

1 Moreover, FERC Order 2222 encompasses a much broader range of
2 technologies, both in front of and behind the meter. The Order includes in the
3 definition of DERs “resources that are in front of and behind the customer meter,
4 electric storage resources, intermittent generation, distributed generation, demand
5 response, energy efficiency, thermal storage, and electric vehicles and their supply
6 equipment – as long as such a resource is ‘located on the distribution system, any
7 subsystem thereof or behind a customer meter.’”⁸ On the other hand, the Net
8 Metering Act is limited to behind-the-meter facilities that generate electricity using
9 solar, wind, biomass, biogas, or hydro energy.⁹ And this Commission retains the
10 authority to prevent customers from participating in retail distributed energy
11 resource programs if those customers are also participating in RTO/ISO markets, to
12 avoid the customer from receiving double compensation.”¹⁰ Hence, the net metering
13 guidelines at issue in this proceeding are, in many respects, mutually exclusive
14 from the purview of FERC Order 2222.

15 ***b. Small utility “opt-in”***

16 Importantly, FERC Order 2222 contains an opt-in provision for small
17 utilities. In comments in response to the Notice of Proposed Rulemaking (“*NOPR*”),
18 the National Rural Electric Cooperative Association (“*NRECA*”), on behalf of
19 cooperatives including Big Rivers and its Members, requested “that [FERC] adopt

⁸ *Id.* at ¶ 114.

⁹ KRS 278.465(2).

¹⁰ FERC Order 2222 at ¶ 162 (footnote omitted).

1 an opt-out/opt-in provision...to allow relevant electric retail regulatory authorities
2 to decide whether distributed energy resources may participate in aggregations in
3 RTO/ISO markets.”¹¹ Specific to small utilities, NRECA and other commentators
4 raised concerns

5 about the cost, and operational and reliability impacts, of
6 distributed energy resource aggregations on distribution
7 utilities and the distribution system...that costs borne by
8 small utilities and their customer bases may outweigh the
9 benefits of distributed energy resource aggregation
10 participation in RTO/ISO markets, and that small to
11 medium-sized distribution utilities may not have the
12 resources needed to coordinate with distributed energy
13 resource aggregators and RTOs/ISOs.¹²

14 More specifically, these commentators noted that “rate design challenges can be
15 particularly acute for small to medium-sized distribution utilities...that monitoring
16 and responding to system impacts associated with distributed energy resource
17 aggregation activity could be particularly difficult for small and medium-sized
18 utilities... that the costs of installing new meters or new communication technology
19 to capture wholesale market transactions would burden smaller distribution
20 utilities in particular...that smaller distribution cooperatives may not have staff or
21 resources needed to conduct ongoing operational coordination with RTOs/ISOs and
22 distributed energy resource aggregators... that the considerable amount of funding
23 required to potentially benefit a small number of customers imposes too large of a
24 burden on small utilities...[and] that, particularly for a small utility, the costs of

¹¹ *Id.* at ¶ 47.

¹² *Id.* at ¶ 50.

1 ongoing coordination, metering, settlements, and rate-unbundling needed to
2 support sales to RTO/ISO markets by distributed energy resources may far exceed
3 the potential efficiency benefits from their participation in RTO/ISO markets.”¹³
4 NRECA stressed that “opt-out/opt-in provisions would lessen the compliance burden
5 on smaller entities” and reduce concerns that “distributed energy resource
6 aggregators may ‘cherry-pick’ the more lucrative resources in a system,
7 undermining reliability and the ability of utilities to develop and invest in their own
8 integrated distributed energy resources portfolio.”¹⁴

9 FERC recognized the potentially greater burden on small utilities in adopting
10 a small utility opt-in provision:

11 [W]e acknowledge that this final rule may place a
12 potentially greater burden on smaller utility systems.
13 Recognizing this potentially greater burden on small
14 utility systems, we will exercise our discretion to include
15 in this final rule an opt-in mechanism for small utilities
16 similar to that provided in Order No. 719-A.
17 ***Specifically, we determine that customers of utilities***
18 ***that distributed 4 million MWh or less in the***
19 ***previous fiscal year may not participate in***
20 ***distributed energy resource aggregations unless the***
21 ***relevant electric retail regulatory authority***
22 ***affirmatively allows such customers to participate***
23 ***in distributed energy resource aggregations.***¹⁵

24 To the extent the Commission is going to consider FERC Order 2222 in this
25 proceeding, the Commission should refuse to allow customers of small utilities from

¹³ *Id.* at p. 40, note 16.

¹⁴ *Id.* at ¶ 50.

¹⁵ *Id.* at ¶ 64 (emphasis added) (footnote omitted).

1 participating in distributed energy resource aggregations based on the concerns
2 expressed in FERC Order 2222.

3 ***c. Jurisdiction between FERC and state regulators***

4 While FERC Order 2222 prevents state regulatory authorities from
5 prohibited DERs from participating in RTO/ISO markets generally,¹⁶ it also
6 emphasizes the “vital role for state and local regulators with respect to retail
7 services and matters related to the distribution system, including design,
8 operations, power quality, reliability, and system costs.”¹⁷ The Order states,
9 “[N]othing in this final rule preempts the right of states and local authorities to
10 regulate the safety and reliability of the distribution system and that all distributed
11 energy resources must comply with any applicable interconnection and operating
12 requirements.”¹⁸

13 Thus, FERC Order 2222 does not preempt the existing net metering
14 guidelines, or the Commission’s authority to establish interconnection rules to
15 protect safety and system reliability, or rules that ensure net metering customers
16 bear any system upgrade or other costs caused by such customers.

¹⁶ *Id.* at ¶ 56 (“We decline to include a mechanism for all relevant electric retail regulatory authorities to prohibit all distributed energy resources from participating in the RTO/ISO markets through distributed energy resource aggregations (i.e., to opt out)”).

¹⁷ *Id.* at ¶ 44.

¹⁸ *Id.*

1 ***d. Role of distribution utilities for interconnection***

2 Coordination efforts under FERC Order 2222 extend to distribution utilities.

3 In response to the NOPR, distribution utilities voiced a “broad range of concerns
4 about their role in coordination and the impact of distributed energy resource
5 aggregation on their distribution systems.”¹⁹ NRECA specifically argued “for
6 distribution utility review of individual distributed energy resource participation in
7 distributed energy resource aggregations before the resources participate in
8 RTO/ISO markets.”²⁰ NRECA further proposed that review criteria include the
9 requirements “that the participation of a distributed energy resource in an
10 aggregation will not create any safety, reliability or power quality concerns on their
11 systems, and that implementation of distributed energy resource aggregation will
12 conform to the requirements of the IEEE standards.”²¹ FERC Order 2222
13 acknowledges these concerns, stating:

14 [E]ach RTO/ISO must coordinate with distribution
15 utilities to develop a distribution utility review process
16 that includes criteria by which the distribution utilities
17 would determine whether (1) each proposed distributed
18 energy resource is capable of participation in a distributed
19 energy resource aggregation; and (2) the participation of
20 each proposed distributed energy resource in a distributed
21 energy resource aggregation will not pose significant risks
22 to the reliable and safe operation of the distribution
23 system.²²

¹⁹ *Id.* at ¶ 283.

²⁰ *Id.*

²¹ *Id.* at ¶ 287.

²² *Id.* at ¶ 292.

1 FERC Order 2222 further calls for the involvement of distribution utilities
2 with market participation agreements. Commenters to the NOPR agreed “that
3 market participation agreements between RTOs/ISOs and distributed energy
4 resource aggregators are necessary.”²³ Cooperatives favored “utilities being party to
5 the agreements and argue[d] that the agreement should demonstrate that the
6 aggregation has been authorized by the utility or its relevant regulatory
7 authority.”²⁴ Thus, the Order requires RTOs/ISOs to “establish market rules that
8 address market participation agreements for distributed energy resource
9 aggregators.”²⁵ Specifically, the “market participation agreement must include an
10 attestation that the DER aggregator’s aggregation is compliant with the tariffs and
11 operating procedures of the distribution utilities and the rules and regulations of
12 any relevant electric retail regulatory authority.”²⁶

13 The continued role that distribution utilities play with respect to DER
14 aggregators is consistent with existing the net metering guidelines, and, in
15 addition, the Commission should allow utilities to enter into special contracts or
16 adopt rules and other tariffs for DER providers and aggregators who fall outside of
17 the Net Metering Act, to ensure the safety of utility personnel, the reliability of the

²³ *Id.* at ¶ 342.

²⁴ *Id.* at ¶ 346.

²⁵ *Id.* at ¶ 352.

²⁶ *Id.*

1 electric system, and that non-participating customers are not forced to subsidize
2 participating customers.

3 III. CONCLUSION

4 *a. Net metering guidelines*

5 Big Rivers and its Members are not proposing change to the existing net
6 metering guidelines. Any proposed changes should be discussed through a
7 collaborative process and should only be adopted if they adequately protect the
8 safety of utility personnel, the reliability of the electric system, and non-
9 participating customers from having to subsidize net metering customers. The
10 rates paid to net metering customers for excess generation should not be a part of
11 this proceeding and should instead be considered in utility-specific rate proceedings
12 as required by KRS 278.466(3) and (5).

13 *b. FERC Order 2222*

14 With regard to FERC Order 2222, Big Rivers and its Members emphasize the
15 Order does not interfere with the Commission's net metering guidelines, or with
16 allowing utilities to enter into agreement or to adopt rules or other tariffs for DER
17 customers falling outside the Net Metering Act, in order to establish interconnection
18 and similar requirements that ensure the safety and reliability of the system, and
19 appropriate cost recovery.

20 *****

1 Filed this 19th day of April, 2021.

2 Respectfully submitted,

3 BIG RIVERS ELECTRIC CORPORATION

4
5 */s/ Tyson Kamuf*

6
7 _____
8 Tyson Kamuf

9 Senthia Santana

10 Greg Mayes, Jr.

11 201 Third Street, P.O. Box 24

12 Henderson, Kentucky 42419-0024

13 Phone: (270) 827-2561

14 Fax: (270) 844-6417

15 Email: tyson.kamuf@bigrivers.com

16 Email: senthia.santana@bigrivers.com

17 Email: gregory.mayes@bigrivers.com

18 *Counsel for Big Rivers Electric Corporation*