

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

**IN THE MATTER OF:**

<b>ELECTRONIC INVESTIGATION INTO</b>	)	
<b>KENERGY CORP.'S COMPLIANCE WITH</b>	)	<b>CASE NO.</b>
<b>KRS 278.160 AND ITS NET METERING</b>	)	<b>2020-00332</b>
<b>TARIFF</b>	)	

**KENERGY'S RESPONSE PURSUANT TO ORDER**  
**OF OCTOBER 13, 2020**

**KENERGY CORP.** ("Kenergy"), for its response pursuant to the Commission's order of October 13, 2020, states as follows:

KRS 278.466 was amended effective January 1, 2020, to relieve a retail electric supplier from net metering obligations once its net metering system exceeded 1% of its "single hour peak load during a calendar year." Kenergy's Schedule 46 net metering systems as of January 1, 2020, exceeded 1% of Kenergy's peak in 2019 in August. (See attached "Exhibit A") KRS 278.466 states that, "the supplier shall have no further obligation to offer net metering to any new customer generator at any time." Kenergy, in good faith believed that the statute ceased Kenergy's obligation to provide schedule 46 net metering, and, pursuant to Commission Order of December 9, 2019, in 2019-00440, Kenergy amended its tariff effective January 1, 2020, to put the new 45 kW limit in place under Schedule 46.

However, in complying with the Order in 2019-00440, Kenergy inadvertently did not delete “upon Commission approval” from the Schedule 46 tariff regarding the lack of obligation to provide net metering beyond 1% of its prior calendar year peak load.

In reliance on KRS 278.466<sup>1</sup>, Kenergy has declined new Schedule 46 metering systems in 2020 because its existing net metering systems have exceeded 1% of its peak load. Kenergy has added 10 Schedule 43 systems since reaching peak. Kenergy agrees that Schedule 46 should be amended to delete “upon Commission approval” and an amended tariff is being filed with this response. Kenergy will notify its Schedule 43 members who would otherwise have been eligible for Schedule 46 that they have the option to migrate to Schedule 46. (Proposed notice attached as Exhibit B). Kenergy has pending requests for net metering installations that it will place under Schedule 46.

Kenergy proposes the following in Response to the Order of October 13, 2020:

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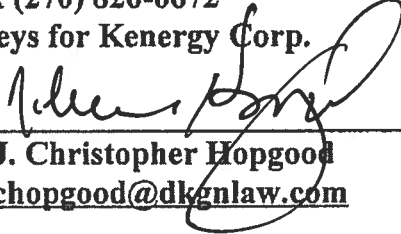
<sup>1</sup>In *Cincinnati Bell Tel. Co. v. Ky*, P.S.C., 223 S.W.3d 829 (Ky. App. 2007) the Court cited KRS 278.160 and stated that every order of the Commission shall continue in force . . . unless the order is suspended or vacated in whole or part, by order of decree of a court of competent jurisdiction.” If a Court can override a tariff then there is no question that a statute could as well. The Kentucky Public Service Commission is a creature of statute and is bound by statutory changes. In *Maislin Indus. v. Primary Steel*, 497 U.S. 116 (1990), Justice Brennan, in analyzing the filed rate doctrine, stated “[a]lthough the Commission has the authority and expertise generally to adopt new policies when faced with new developments in the industry, [citation] it does not have the power to adopt a policy that directly conflicts with its governing statute.” (emphasis added). The Commission noted in its December 18, 2019, Order in 2019-00256 that, “the Commission does not have the authority to ignore a statute that was lawfully enacted.” However, Kenergy concedes it should have amended its tariff and agrees to abide by the tariff until its amendment is approved.

1. To amend its tariff as shown in "Exhibit C;" and
2. To allow those ten Schedule 43 members to migrate Schedule 46 and to allow the pending net metering applicants to come onto the system under Schedule 46, provided they meet the requirements of Schedule 46.

The cost to Kenergy's members of the subsidy to net metering systems from January 2019 through September 2020 was \$73,867. Kenergy requests that the amended tariff be approved with all deliberate speed as the continued effect of net metering negatively affects its members.

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Telefax (270) 826-6672  
Attorneys for Kenergy Corp.

By

  
\_\_\_\_\_  
J. Christopher Hopgood  
[chopgood@dkgnlaw.com](mailto:chopgood@dkgnlaw.com)

**VERIFICATION**

I verify, state and affirm that the foregoing factual statements are true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Jeff Hohn

STATE OF KENTUCKY

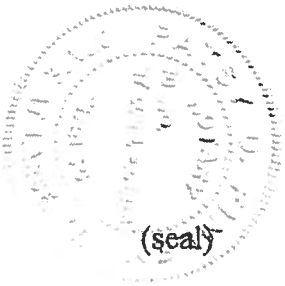
COUNTY OF DAVIESS

The foregoing was signed, acknowledged and sworn to  
before me by JEFF HOHN this 23 day of October, 2020.

My commission expires 7-14-2021

*Patsy D. Finley*

Notary Public, State of Kentucky at Large



DAY	TIME	SYSTEM PEAK
30-Jan-19	8:00	241.928
8-Feb-19	6:00	202.575
5-Mar-19	6:00	224.543
1-Apr-19	7:00	159.365
28-May-19	15:00	205.27
30-Jun-19	17:00	233.59
19-Jul-19	16:00	242.8198
<del>22-Aug-19</del>	<del>14:00</del>	<del>233.45</del>
13-Sep-19	15:00	238.269
2-Oct-19	15:00	235.071
13-Nov-19	6:00	226.29
19-Dec-19	6:00	203.928

Kenergy's solar installations currently use 3.1 MWs



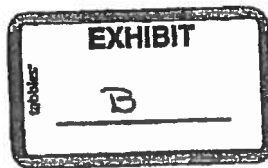
Kenergy is offering its members participating in schedule 43 (Small power production or cogeneration) a limited opportunity to switch to schedule 46 (Net metering). Some of the key differences are as follows.

- Your over production rate will be the same as your current retail rate
- The maximum capacity is lowered to 45 Kilowatts
- The excess production is in the form of a bill credit and not direct monetary compensation
- Upon closure of the account any accrued credits will be lost

Included is a copy of schedule 46, if it is your desire to be placed under schedule 46 please complete the application on page 46K and return to Kenergy. If you have any questions, please feel free to call.

Sincerely:

Scott Heath





Henderson, Kentucky

FOR ALL TERRITORY SERVED

Community, Town or City

PSC NO. 2

~~Third~~~~Second~~ Revised SHEET NO. 46

CANCELLING PSC NO. 1

~~Second~~~~First~~ Revised SHEET NO. 46

**CLASSIFICATION OF SERVICE**  
Schedule 46 – Net Metering

APPLICABLE

In all territory served.

AVAILABILITY OF SERVICE

Net Metering is available to eligible customer-generators in Kenergy's service territory, upon request, and on a first-come, first-served basis up to a cumulative capacity of one percent (1%) of Kenergy's single hour peak load in Kentucky during the previous calendar year. If the cumulative generating capacity of net metering systems reaches 1% of Kenergy's single hour peak load during the previous calendar year, ~~upon Commission approval~~ Kenergy's shall have no further obligation to offer net metering to a new customer-generator ~~may be limited at any subsequent time~~. An eligible customer-generator shall mean a retail electric customer of Kenergy with a generating facility that:

- (1) Generates electricity using solar energy, wind energy, biomass or biogas energy, or hydro energy;
- (2) Has a rated capacity of not greater than forty-five (45) kilowatts;
- (3) Is located on the customer's premises;
- (4) Is owned and operated by the customer;
- (5) Is connected in parallel with Kenergy's electric distribution system; and
- (6) Has the primary purpose of supplying all or part of the customer's own electricity requirements.

At its sole discretion, Kenergy may provide Net Metering to other customer-generators not meeting all the conditions listed above on a case-by-case basis.

DATE OF ISSUE October 22, 2020 ~~December 19, 2019~~  
Month / Date / Year

DATE EFFECTIVE January 1, 2020  
Month / Date / Year

ISSUED BY \_\_\_\_\_  
(Signature of Officer)

TITLE President and CEO

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION  
IN CASE NO. 2020-0033 ~~2019-00140~~ DATED December 9, 2019



