COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

ELECTRONIC APPLICATION OF KENTUCKY UTILITIES COMPANY FOR AN ADJUSTMENT OF ITS ELECTRIC RATES, A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO DEPLOY ADVANCED METERING INFRASTRUCTURE, APPROVAL OF CERTAIN REGULATORY AND ACCOUNTING TREATMENTS, AND ESTABLISHMENT OF A ONE-YEAR SURCREDIT	)))))))))	CASE NO. 2020-00349
ELECTRONIC APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY FOR AN ADJUSTMENT OF ITS ELECTRIC AND GAS RATES, A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO DEPLOY ADVANCED METERING INFRASTRUCTURE, APPROVAL OF CERTAIN REGULATORY AND ACCOUNTING TREATMENTS, AND ESTABLISHMENT OF A ONE-YEAR SURCREDIT	)))))))))	CASE NO. 2020-00350

KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
JOINT POST-HEARING RESPONSE BRIEF

Comes now the Kentucky Solar Industries Association, Inc. (KYSEIA), by and through counsel, and, pursuant to the Commission's May 3, 2021 Order, files this Joint Post-Hearing Response Brief. The Commission should deny the rates and changes proposed by Kentucky Utilities Company's ("KU") and Louisville Gas and Electric Company's ("LG&E) (collectively "Companies") for net metering service and qualifying facilities.

Through this Response, KYSEIA provides comments on the memorandums submitted on behalf of KU and LG&E and on behalf of the Kentucky Office of the Attorney General ("KY OAG") and Kentucky Industrial Utility Customers, Inc. ("KIUC"). The lack of comment upon a matter raised by another party but not addressed through this response is not a concession and should not be taken as an agreement with a position of another party.

1. **The Companies' Avoided Production Cost of Energy for the Rider SQF Rate is Not the Appropriate Export Rate for Net Metering.**

If it had been the Legislature's intent to have the rate for a small qualifying facility apply to the exports of all eligible electric generating facilities with design capacity of 100 kW or less, it could have, and would have, simply ended net metering. Alternatively, it could have, and would have, expressly stated and adopted "avoided costs" as the export rate. It did not do either.

Instead, as clear by examination of Senate Bill 100, the legislative intent is to revise the net metering framework, and it contains the express instruction for the Commission to use the "ratemaking process" provided by KRS Chapter 278 in establishing rates.[1] For net metering, the Commission is not discharging "duties conferred upon it by Title II of the Public Utility Regulatory Policy Act of 1978 ("PURPA");[2] instead, the Commission is exercising its jurisdiction to establish fair, just, and reasonable rates by reference to the framework established by KRS Chapter 278. To the extent that KU and LG&E advocate on behalf of a myopic avoided cost approach, they are arguing for implementation of legislation that has not been enacted. The legislative expectation for their net metering tariffs is more than an adoption of Rider SQF policy.

2. **Kentucky Law Vests with the Commission Plenary Power to Set Rates.**

[1] KRS 278.466(5).
[2] 807 KAR 5:054, Section 2.

While it is the case that KRS Chapter 278 contains certain specific instructions for the Commission to follow in establishing fair, just and reasonable rates such as, for example, the rated capacity limit of "not greater than forty-five (45) kilowatts" for an "eligible electric generating facility" for net metering.[3] Nonetheless, the Supreme Court of Kentucky has rejected the view that all powers not expressly granted are forbidden to the Commission.[4] The Commission has "plenary authority to regulate and investigate utilities to ensure that rates charged are fair, just and reasonable under KRS 278.030 and KRS 278.040."[5]

The Companies fail to identify any Commission precedent through which the Commission even hints that it seeks to facilitate a violation of the forty-five (45) kilowatt ceiling through any Order on net metering. [6] The Companies' argument on this point is, at best, specious. At issue is what is taking place under the ceiling. The legislative action of increasing the rated capacity of an eligible electric generating facility from thirty (30) kilowatts to forty-five (45) kilowatts through Senate Bill 100 manifests an intent to increase rather than decrease net metering options. The increase in the ceiling amount is an act of promoting of net metering, not termination.

The Companies are unhappy that the Commission has chosen to balance the interests of all parties and provide protections to future net metering customers to promote the recovery of "their costs or earn a return on their investments."[7] Senate Bill 100 expressly provides for the protection

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[3] KRS 278.465(2).
[4] *Kentucky Public Service Commission v. Commonwealth, ex rel. Conway*, 324 S.W.3d 373, 383 (Ky 2010).
[5] *Id; see also National-Southwire Aluminum Co. v. Big Rivers Electric Corp.,* 785 S.W.2d 503, 511, 516 (Ky. App. 1990) ("[C]onflicting interest of all parties concerned with utility rates are fairly balanced." And: Commission with "fundamental responsibility" to balance the interest of all parties).
[6] *See* KU and LG&E Joint Post-Hearing Brief (filed May 24, 2021) at page 14.
[7] *Id.*

of "legacy" net metering customers for a period of 25 years.[8] Consistent with the protection of legacy customers, the Commission has chosen to recognize protections for future net metering customers. The additional protections are consistent with Senate Bill 100, KRS Chapter 278, and well within the Commission's plenary powers. Further, the protections are also logical and consistent with the principle of gradualism, that the structure of the rate design is not subject to the whims and caprice of the Companies.

3. **Avoided Losses, Among Other Things, Demonstrate that Avoided Production Cost of Energy is Not the Proper Measure.**

While arguing that the Companies' "avoided production cost of energy as approved by the Commission in Rider SQF" is the correct export rate, the Companies acknowledge that "a small adjustment for avoided losses (no more than 6%) might be plausible."[9] The failure of the Companies to fully acknowledge line losses, of itself, demonstrates the inadequacy of the Companies' development of an export rate and, in turn, their failure to meet their burden of proof. Moreover, avoided line losses is only one item or one component of the export rate that the Companies failed to develop.

The Companies' position impermissibly seeks to shift to the Commission or the other parties a duty to prove their proposed rates is inappropriate.[10] Avoided line losses, among other things, demonstrate that avoided production cost of energy is not the proper measure for an export rate, and the burden to demonstrate a proper export rate falls solely upon the Companies.

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[8] KRS 278.466(6).

[9] KU and LG&E Joint Post-Hearing Brief (filed May 24, 2021) at page 15.

[10] *See* KRS 278.190(3); Case No. 8836, *Notice of Adjustment of Rates of Kentucky-American Water Company*, (Ky. PSC Dec. 20, 1983) at page 9; *Energy Regulatory Commission v. Kentucky Power Co.* 605 S.W.2d 46, 50 (Ky. App. 1980).

The Companies, who have the burden, argue based upon an absence of evidence.[11] The reason why the evidence is lacking is because the Companies have not adequately studied these issues. They seek to profit from the absence of evidence that they are required to produce. They have remarkably little information on the distributed generation facilities on their systems, yet they seek to fundamentally rewrite their relationships with prospective net metering customers.

The Commission entered a comprehensive Order for net metering for Kentucky Power Company in Case No. 2020-00174.[12] Per the May 14, 2021 Order in that Case:

> 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 measures of benefits of eligible customer-generators, leading the Commission to incorporate additional avoided costs components beyond those proposed by Kentucky Power.[13]

There is nothing in Senate Bill 100 that relieves the Companies of their burden of proof. The Companies cannot prevent or frustrate the necessary evaluation of a broad range of known or reasonably expected measure of benefits through failing to study them. The adverse consequence of any failure of evidence on the issues necessary to demonstrate that the rates proposed are fair, just and reasonable falls on the Companies.

4. **The KY OAG and KIUC Argument Concerning What Might Happen at Some Point in the Future is Simply Not Convincing, and Their "Fair Market Value" Argument is Based Upon Legislative Language that Was Not Enacted.**

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[11] KU and LG&E Joint Post-Hearing Brief (filed May 24, 2021) at pages 15 through 17.
[12] Case No. 2020-00174, *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* (Ky. PSC May 14, 2021) ("KPC Order").
[13] *Id.*, at pages 21 and 22.

The KY OAG and KIUC argument concerning the growth of rooftop solar is not based upon consideration of current conditions. The argument is not grounded in, or even tethered to, the test year or current conditions. Instead, the argument is the nature of hyperbole. It is unwarranted speculation as to what might happen "as the implementation of rooftop solar grows."[14]

First, it is important to note that net metering to date has not been demonstrated as financially or operational problematic to either of the Companies or their customers. Second, the KY OAG and KIUC ponder potential future condition and ask for the Commission to pre-judge whether rates will be fair, just and reasonable under a set of circumstances that does not currently exist, for a record that has yet to be developed, and a proposal that has not been presented. To this end, their one percent (1%) argument should simply be ignored as it offers no guidance for the issues to be decided in these proceedings.

The KY OAG and KIUC also offer a "fair market value" as "dollar value" argument which urges that the plain language of the statute, KRS 278.466, equates to fair market value.[15] Just as the Legislature could have but did not use "avoided costs" when enacting Senate Bill 100, the Legislature did not enact the "fair market value" language or methodology suggested by the KY OAG and KIUC. Instead, the Legislature assigned to the Commission the responsibility to develop a compensation rate through the ratemaking process in KRS Chapter 278. Indeed, the intent of Senate Bill 100 is for the Commission to determine fair, just and reasonable rates through a traditional comprehensive consideration of all relevant factors, the normal process.

If the Legislature had wanted to wholly remove the rate-setting prerogatives and plenary authority of the Commission, it would have done so in a manner similar to initial enactment of the

[14] Joint Post-Hearing Brief of KY OAG and KIUC (filed May 24, 2021) at pages 16 and 17.
[15] *Id.*, at 14.

one-to-one (1:1) energy credit. Specifically, the Legislature itself would have specified the rate. It did not, and it did not specify a rate such as avoided costs, "fair market value," or a rate determined by reference to a specific tariff rate developed for qualifying facilities. The Legislative expectation for the rate remains a fair, just and reasonable rate determined through normal ratemaking process.

5. The Companies Claims Regarding QFs are Unfounded.

The Companies claim that Kentucky law requires the Companies to refuse to purchase power at a cost higher than their cost of generation.[16] KYSEIA is not suggesting that the Commission should impose costs in addition to the cost of generation. It is the cost of generation itself that is in dispute, specifically KYSEIA's suggested inclusion of capacity compensation and line loss adders in addition to marginal energy costs. Avoided costs of generation properly include these components.

The Companies also suggest there is no evidence that small capacity additions would result in any avoided capacity cost for Rider SQF and its associated capacity.[17] Yet, just because a facility is small does not mean it will not contribute to capacity. If that were the case, the incremental small peak load reductions associated with individual customers' responses to Time of Use rates would have no value. The value of capacity, QF or otherwise, is cumulative.

The Companies claim that newly established compensation rates will become the minimum pricing in any future RFPs for renewable generation and that a potential supplier will have no incentive to offer below that pricing.[18] Again, this too is speculative. The QF rate would not apply to facilities larger than 80 MW, which is what RFP approaches tend to produce. Those solicitations would be competitive. Consequently, bidders could not "minimum price" their proposals.

[16] KU and LG&E Joint Post-Hearing Brief (filed May 24, 2021) at page 21.
[17] *Id*. at 19.
[18] *Id*. at 18-19.

Furthermore, the QF rules subject QF contracts to Kentucky Public Service Commission review, adding additional oversight.[19]

The Companies also claim that they will not need capacity until 2028 at the earliest, and that a "five-year contract with a QF should have zero capacity value until at least 2023."[20] First, KYSEIA and others have challenged the Companies' need for capacity.[21] Second, the five-year term is a minimum, not a maximum term length. Even if there was no need for capacity, the Companies can offer a standardized longer-term contract if a QF wants capacity compensation, and the Companies' own arguments suggest that the receipt of capacity compensation should be conditional on a longer contract (e.g., 20 years).

The Companies claim, "the Commission's QF regulations require a legally enforceable obligation for a QF to receive capacity compensation, but under the terms of the same regulations, as-available energy, which is what solar and wind facilities without energy storage necessarily provide, cannot receive capacity payments."[22] This distorts the significance of an LEO. A QF purchase rate that includes capacity compensation operates as its own enforcement mechanism. A QF is only compensated for providing capacity when it delivers energy during on-peak periods. A LEO functions as a benchmark for obligating a utility to purchase energy and capacity. It effectively works as a QF's commitment to sell. Furthermore, LEOs have not precluded capacity compensation in QF tariffs throughout other parts of the country.

The Companies' capacity claims related to a recent solar Purchase Power Agreement are also unfounded. The Companies claim, "This arrangement is likely stronger than most legally

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[19] 807 KAR 5:054, Section 7, (3) and (4).
[20] KU and LG&E Joint Post-Hearing Brief (filed May 24, 2021) at page 19.
[21] *See* KYSEIA's Post Hearing Brief, Section 3.2.3 (iii).
[22] KU and LG&E Joint Post-Hearing Brief (filed May 24, 2021) at page 19.

enforceable obligations with large QFs in terms of guarantees and financial commitments to the utility being served, yet there are no capacity payments at all."[23] The fact that there is not an unbundled capacity component in this PPA, or other PPAs, is not indicative of a lack of capacity value being delivered to the utility. The fact that a single contractual arrangement for commercial purposes does not contain separate capacity pricing has no bearing on the Companies' avoided capacity costs.

Lastly, the Companies claim a QF's capacity value (or any generating facility's capacity value) should be determined by comparing comparable facilities (comparing solar to solar).[24] KYSEIA is not arguing that the Companies should compensate 10 MW of solar capacity as though it has the same reliability, dispatchability, and performance characteristics—including intermittency—as a more traditional fossil-fueled generating unit. Instead, capacity costs should be set to the next capacity unit addition, not the value of compensation. Capacity compensation should reflect the predictable contribution of a resource during times of peak needs.

WHEREFORE, KYSEIA continues to respectfully request the Commission approve the agreed upon terms in the Stipulation and Recommendation and deny the Companies' net metering and qualifying facilities proposals discussed in this response.

Respectfully submitted,

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[23] *Id*. at 20.
[24] *Id*. at 19-20.

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NOTICE AND CERTIFICATION FOR FILING

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 1st day of June 2021, and further certifies that the electronic version of the paper is a true and accurate copy of each paper filed in paper medium. Pursuant to the Commission's March 16, 2020, and March 24, 2020, Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, the paper, in paper medium, will be filed at the Commission's offices within 30 days of the lifting of the state of emergency.

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NOTICE REGARDING SERVICE

The Commission has not yet excused any party from electronic filing procedures for this case.

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