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.
RESPONSE TO JOINT PETITION OF KENTUCKY
UTILITIES COMPANY AND LOUISVILLE GAS
AND ELECTRIC COMPANY FOR RECONSIDERATION
OF THE SEPTEMBER 24, 2021 ORDER**

Comes now the Kentucky Solar Industries Association, Inc. ("KYSEIA"), by and through counsel, and files this Response to the Joint Petition of Kentucky Utilities Company ("KU") and the Louisville Gas and Electric Company ("LG&E") (collectively "Companies") for reconsideration of the September 24, 2021. The Commission should deny the Joint Petition as the Order is consistent with both the law and evidence of record in these proceedings, and the Companies offer nothing new that warrants reconsideration.

I. The Commission's September 24, 2021, Order Correctly Applies Kentucky's Net Metering Law and is Within the Requirements of PURPA. The Rates Have Been Set in Accordance with Law, and Joint Petitioners Fail to Identify Any Ground for Rehearing.

The Companies' discussion in Section I is a general, or umbrella, argument to the effect that even if the Commission sets rates supported by the evidence in the record and in compliance with the requirements of the net metering statutes in KRS Chapter 278 and the requirements of PURPA for qualifying facilities, the rates in the instant cases are unlawful because they are alleged to run afoul of the Commission's objective concerning "lowest reasonable cost."

The Commission is ***required***, as part of its objectives, to follow its statutorily imposed mandates and set fair, just, and reasonable rates pursuant to the Kentucky's net metering law as well as lawful rates under the PURPA framework for qualifying facilities. The Commission's September 24, 2021, Order sets those rates and thoroughly explains why each cost component developed for net metering and qualifying facilities is consistent with statutory requirements and supported by the evidence. If the Companies believe that the rates are unreasonable, their grievance lies with the language of the statutes themselves, not with how the Commission determined those rates. The Companies only allege the latter, which has no basis. The rates are lawful and reasonable.

The Companies' myopic view is that "lowest reasonable cost" precept (applied by them in these proceedings consequent to their selection of self-serving evidence) renders arbitrary rates set accordance with the mandates of KRS Chapter 278 and PURPA. The Companies' view manifests a fundamental misunderstanding of the Commission's objectives and mandates including the latter's role in protecting the public through preventing an undervaluation of solar generation. The conclusions urged by the Companies do not have a basis in the law or the records in these proceedings. There is no tension between the rates established through the September 24, 2021,

Order and the Commission's objective for "lowest reasonable cost." There is no reason for rehearing.

II. The Commission's September 24, 2021, Order Correctly Determines the Companies' Avoided Costs for Solar Energy. The Joint Petition Fails to Identify Any Ground for Rehearing.

In Section II of the Joint Petition, the Companies only rehash their prior arguments. Through its testimony and post-hearing memorandum, KYSEIA has extensively briefed matters pertaining to qualifying facilities. KYSEIA declines the Companies' invitation to reboot the entire discussion because such a reboot is not the purpose of a petition for rehearing. In response to the Joint Petition, KYSEIA simply adds two comments.

The Commission has legal mandates to establish rates for avoided costs for solar energy. The Companies, though, have the burden of proof. No provision of state or federal law provides the Companies with a license to thwart the establishment of proper rates through the provision of unreliable or inadequate evidence (much less through the omission of evidence). A significant amount of the Companies' argument for rehearing is predicated upon acceptance of their evidence which the Commission did not find persuasive or reliable and the rejection of evidence supplied into the record by other parties.

Weighing the credibility of the evidence is a matter for the Commission in its role as trier of fact. The Commission may draw reasonable inferences from the evidence, and it is not required to review the evidence in a light most favorable to the Companies or draw all inferences in favor of the Companies. For the reasons set forth in the September 24, 2021, Order, the determination that the Companies' capacity need begins in 2025[1] is supported through a valid assessment of the

[1] (Ky P.S.C. Sept. 24, 2021) Order at page 37.

evidence in this record. Although the Commission ***could*** have made a different finding, it was not required by any principle to do so. There is no error in this finding.

In each instance of the Commission's rejection or modification of one of the Companies' proposals, such as avoided generation capacity cost, the Commission explains the reason(s) for the rejection or modification and thereafter provides the basis in the record for the Commission's finding(s) concerning the development of the cost. The QF rates are rationally derived from evidence pertaining to the Companies' avoided costs for solar energy. The Companies' real claim is that the QF rates were not favorably derived from the Companies' evidence and arguments concerning avoided costs. This position does not provide grounds for rehearing or relief.

III. The Commission's September 24, 2021, Order, Correctly Applies the Requirements of Kentucky's Net Metering Statutes Pertaining to Monthly Netting. The Joint Petition Fails to Identify Any Ground for Rehearing.

At pertinent part, the Commission's September 24, 2021, Order states the following:

> Based upon the evidence of record, the Commission finds that LG&E/KU's proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. This is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that "net metering means the difference between" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.[2]

The Commission's Order is wholly consistent with the plain language of KRS 278.465(4). The Commission properly rejected the Companies' instantaneous credit proposal as unlawful. The latter is not the intent of the General Assembly. The Companies fail to identify any infirmity in the Commission's determination. Their position does not provide and ground for rehearing or relief.

[2] *Id.*, at page 48.

IV. The 25-Year Legacy Period for NMS-2 Customers Established Through the Commission's September 24, 2021, Order is Proper Under KRS Chapter 278 as Being Within the Commission's Plenary Authority Over Rates and Service. The Joint Petition Fails to Identify Any Ground for Rehearing.

The Companies' argument that KRS 278.466(6) does not authorize legacy rights to NMS-2 customers fails to identify any ground for rehearing under Kentucky law. The Companies argue that the Commission may not grant "legacy rights of any kind for customers who do not qualify for the exception set out in KRS 278.466(6)."[3] A review of the plain language of KRS 278.466(6) reveals that the General Assembly clearly sought to provide legacy rights to eligible customer-generators taking service before the effective date of the initial net metering order; however, the statutory provision does not contain "only to" or "no legacy protections shall be offered except for" language indicating any limitation or exclusivity concerning legacy rights. *Public Service Commission of Kentucky v. Commonwealth*, 320 S.W.3d 660, 668 (Ky. 2010) (discussing the requirement language of limitation or exclusivity to limit a benefit in KRS Chapter 278). The Companies' argument on this point has no merit. It offends a well-developed and clearly understood principle of Kentucky public utility law.

The Companies, in their argument, fail to reconcile the cases they cite with the landmark decision confirming the plenary authority of the Commission, *Kentucky Public Service Commission v. Commonwealth ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010). The Commission cannot be charged with error in implementing the provisions of Chapter 278 through authorizing additional legacy rights in the absence of language of limitation or exclusivity that expressly limits the provision of legacy protections, and no such language of limitation or exclusivity has been identified by the Company. *See Public Service Commission of Kentucky v. Commonwealth*, 320 S.W.3d 660, 668 (Ky. 2010).

[3] Joint Petition at page 16.

The General Assembly has bestowed upon the Commission very board discretion as a matter of necessity. The General Assembly cannot review every set of circumstances that may affect a customer or group of customers. The Supreme Court of Kentucky has already considered arguments similar to those offered by the Companies in the context of free and reduced rate service and expressly rejected them as not presenting any concerns as to the Commission's exercise of authority. *See Public Service Commission of Kentucky v. Commonwealth*, *supra*.

The General Assembly was well-aware of *Public Service Commission of Kentucky v. Commonwealth*, 320 S.W.3d 660 (Ky. 2010) and *Kentucky Public Service Commission v. Commonwealth ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010) when it enacted Senate Bill 100.[4] If the Legislature had sought a limitation on legacy rights in KRS 278.466(6) as urged by the Companies, it would have included language of limitation or exclusivity and specifically addressed this set of circumstances accordingly. It did not. The Companies' request for rehearing should be denied. The Joint Petition does not provide any ground for rehearing or relief.

V. The Commission's September 24, 2021, Order Correctly Applies Kentucky's Net Metering Law. The Joint Petitioners Fail to Identify Any Ground for Rehearing.

Net metering in Kentucky is the subject of specific legislative instructions that require clearly different results for customers taking service under the initial net metering framework ("NMS-1") than would otherwise be required if net metering legislation had not been enacted. The different results under NMS-1 are part of the "fair, just, and reasonable" framework in KRS Chapter 278 and are not antagonistic to the Commission's other responsibilities in exercising jurisdiction over rates and service. In enacting Kentucky's net metering law, the General Assembly did not create a house divided. NMS-1 was created to live alongside the important objective of

[4] 2019 Ky. Acts Ch. 101 (also known as "Senate Bill 100").

lowest reasonable cost. The "1:1" framework did not diminish the objective of lowest reasonable cost nor did the objective of lowest reasonable cost prohibit the "1:1" framework.

NMS-2 customers also take service under a framework created by the legislature to authorize results that also differ in many respects from the "normal" framework separate from net metering. The considerations in net metering are, by design, different in some respects from other considerations in KRS Chapter 278. However, they are not antagonistic to those other considerations. The objective of lowest reasonable cost remains an important, or primary, concern. Nonetheless, it is necessarily balanced with other objectives and mandates associated with net metering. The Companies want to ignore this fact. They argue about an antagonism that is not intended and which does not exist, and they based this claim on their self-serving price analysis which is not reliable. The rates in the Commission's September 24, 2021, Order are lawfully set because they are set in accordance with statute.

The NMS-2 statutory framework is relatively new. There is no long-standing interpretation of this statute for the Commission to apply. The claim that the Commission is, somehow, revoking a long-standing interpretation of this statute through its September 24, 2021, Order, is without force because there is no such interpretation. The Commission's analysis of Kentucky's net metering law and the intent and design of the avoided cost categories is thorough and well-reasoned. The Commission prescribed rates through its Order which are authorized pursuant to and consistent with Kentucky's net metering law and supported by reliable evidence. Quite to the contrary of the Companies' position, the objective of lowest reasonable cost does not prohibit the Commission's avoided costs components developed in the September 24, 2021, Order to carry out the intent of the net metering law. The objectives are complementary rather than exclusive to one

another. There is no tension between them. There is no error. The Joint Petition does not provide any ground for rehearing or relief.

VI. The Joint Petition Fails to Identify Any Error in the Commission's Decision-Making Process for the September 24, 2021, Order. The Joint Petition Fails to Identify Any Ground for Rehearing.

The Companies assert that the Commission did not adequately document the calculations of certain cost component values in the September 24, 2021, Order; therefore, "it is impossible to know how the Commission arrived at the values" in the Order.[5] The problem with their argument is that the Companies confuse the Commission's determinations (foundation or path for arriving at the values) with the corresponding documentation of those determinations through the calculation of the values (the clerical process of reducing them to writing). They are not the same thing. The Joint Petition fails to identify any ground for rehearing.

The Commission, through its September 24, 2021, Order, explains the intent for each cost component, and the Order also explains the design of each cost component. The Commission's findings for each cost component, including the evidence of record relied upon, are clearly announced through the Order. The Companies fail to contest this aspect of the Order. Therefore, they have defaulted any claim that the findings concerning the intent or design of any cost component is arbitrary. Their claim in Section VI is restricted to an allegation that the calculation of the value based upon the intent and design, the clerical aspect of reducing the cost to writing, ***may*** be in error. The possible error in calculation of the value is their actual due process claim.

If the Companies had a concern that the clerical nature of a value was somehow astray from the intent and description for that cost component, they should have sought an extension of the Order to explain the calculation. If there was an error in reducing the intent and description into a

[5] Joint Petition at page 20.

value, then, as with any clerical error, it could have been corrected by a *nunc pro tunc* Order. This is not, however, what the Companies have done. Instead, they argue that the lack of documentation of a calculation violates due process. The cases the Companies rely upon refute this theory of error.

Ohio Bell Telephone Co. v. Pub. Utilities Com'n of Ohio, 301 U.S. 292 (1930) relied upon by *Bowman Transportation v. Arkansas-Best Freight System*, 419 U.S. 281 (1974), cited by the Companies in Argument VII, demonstrates, quite readily, why the Companies miss the mark through their argument. In *Ohio Bell Telephone Co.*, the regulator collected and failed to disclose evidence. From the discussion of the facts for *Ohio Bell*:

> Without warning or even the hint of warning that the case would be considered or determined upon any other basis than the evidence submitted, the Commission cut down the values for the years after the date certain upon the strength of information secretly collected and never yet disclosed. The company protested. It asked disclosure of the documents indicative of price trends, and an opportunity to examine them, to analyze them, to explain and to rebut them. The response was a curt refusal.

Ohio Bell Telephone Co., 301 U.S. at 300.

The facts of *Ohio Bell* have no similarity to the facts of these proceedings. The violation in *Ohio Bell* pertains to an inability to test evidence secretly collected by the regulator. In the instant proceedings, the Companies do not claim that the Commission collected and failed to disclose evidence. Rather, the claim is that the Commission has failed to disclose Commission calculations based upon the evidence collected in these records of proceedings and thereafter considered by the Commission in its deliberations. The Companies have had an opportunity to offer evidence, test evidence, and provide arguments upon the evidence in the record. That is all that *Ohio Bell*, and related cases, require to satisfy due process. The Companies have no right to engage in discovery upon the Commission or its Staff. The Companies' theory of error has no factual or legal basis in *Ohio Bell*.

There is no presumption that a value is in error when the calculation of a value has not been supplied. More importantly, of itself, an allegation that the Commission failed to adequately document the ***calculation*** of a value does not raise a due process concern under *Ohio Bell*, *Bowman Transportation*, or *Utility Reg. Com'n v. Ky. Water Service Co.*, 642 S.W.2d 591 (Ky. App. 1982) because there is no presumption that the Commission's failure to provide a calculation means that the Commission considered evidence outside of the record or violated any other aspect of due process. Finally, an allegation of error in calculation is not the same type of error identified through cases such as *Ohio Bell*. It is not an allegation concerning proper decision-making; it is an allegation concerning proper documentation of the decision. The Companies improperly conflate the separate types of errors.

The Commission thoroughly explains the design and intent for each cost component in the September 24, 2021, Order. The Companies' substantial evidence argument misses the mark. The evidence supporting the design and intent is of record and is clearly disclosed by the Order. The findings are sufficiently supported. If there is a problem, it is not associated with a lack of evidence. Assuming for argument that there is a problem with a value, the problem stems from the calculation of the value. It is a clerical matter rather than an evidentiary matter. The Companies fail to identify any due process concern. The Joint Petition does not provide any ground for rehearing or relief.

VII. The Joint Petition Fails to Identify Any Error in the Commission's September 24, 2021, Order Concerning Cost Recovery for QF and NMS-2. The Joint Petition Fails to Identify Any Ground for Rehearing.

The first problem with the Companies' argument in Section VII is that they assert as a given that QF arrangements and NMS-2 activities require the same cost recovery treatment for the Companies. This premise has not been proven by the Companies in these proceedings. In fact, they do not make a convincing argument that NMS-2 activities require ***any*** treatment through the

Companies' Fuel Adjustment Clauses or through regulatory asset treatment. Additionally, with regard to QF arrangements, their "above-market" and "above avoided cost" rate theory is predicated upon an acceptance of the Companies' various allegations concerning the market and their avoided costs. These assertions are also not convincing. The Companies' argument in Section VII fails to identify any error. The Joint Petition does not provide any ground for rehearing or relief.

VIII. The Joint Petition Fails to Identify Any Error in the Commission's Concerning the Commission's Commentary Upon the Evidence in the Records. The Joint Petition Fails to Identify Any Ground for Rehearing.

In the extended discussion in Section VIII of their Joint Petition, the Companies identify one comment in the Commission's September 24, 2021, Order as the sole foundation for their (Section VIII) claim of error. Specifically, the Companies assert the following as the basis for their allegation of error in the Commission's Order.

> The QF-NMS Order's implication that an ADMS is simply a more expensive means to accomplish what smart inverters can do to control voltage on distributed generation resources reflects a fundamental misunderstanding of what the Companies' Distributed Automation and DMS projects are designed to do and the immense benefits they have already provided and will in the future provide to the system.[6]

A closer examination of the September 24, 2021, Order demonstrates that the foundation of the Companies' claim of error is the Commission's recitation of procedural facts regarding the June 30, 2021, Order in these proceedings. From page 2 of the September 24, 2021, Order:

> The Commission also found [in its June 30, 2021, Order] that additional information regarding advanced distribution management solutions (ADMS) and Distributed Energy Resource Management Systems (DERMS) was necessary because of LG&E/KU's plans to spend significant amounts on ADMS and DERMS to address potential issues with a dynamic distribution system, such as voltage regulation, even though the penetration of such resources on

[6] Joint Petition at page 23 (citing to (Ky P.S.C. Sept. 24, 2021), Order at page 2 in these proceedings).

> LG&E/KU's system is miniscule and there are other, more affordable alternatives to ADMS and DERMS.

The Companies condemn the Commission and assign as error from the September 24, 2021, Order: (1) The Commission's recitation of a procedural fact; and (2) commentary upon the evidence and notice to the Companies of the Commission's intent to continue to scrutinize or investigate the Companies' planning for its distribution system as part of the continued proceedings in the instant cases. Setting aside the completely meritless allegation that the Commission can commit error through reciting a procedural fact that is not disputed by the Companies as an inaccurate recitation, the Companies allege that the Commission can be charged with error for investigating the Companies' distribution system in these proceedings and commenting upon the evidence gathered as part of the investigation, including the credibility of the evidence.

The Companies' distribution system and planning for its distribution system are relevant to these proceedings, and the Commission is fully empowered to gather the evidence that it deems necessary as part of these proceedings. The Commission is also fully empowered to comment upon any evidence in the records of these proceedings. The Companies have no right for their evidence to be free from criticism. There is no error in the Commission's comments upon the evidence in its role as trier of fact for these applications.

The Companies attempt to create a new theory of error through which they allege it is impermissible for the Commission to, somehow, prejudge the Companies' business planning through commentary on the problems with the Companies evidence. Even a cursory review of the Order demonstrates the "whole cloth" nature of the allegation. The Commission's discussion in its September 24, 2021, Order does nothing more than what has been taking place for decades in the

Commission's regulation of jurisdictional utilities and is presumably welcomed by less sensitive utilities. It points out to the Companies the type of evidence the Commission seeks.

Two Commission comments, in particular, from the September 24, 2021, Order warrant restatement through this pleading.

> While the Commission understands that challenges remain with DER integration, LG&E/KU rely on extreme examples where distributed generation with traditional technology is present at high penetrations, as opposed to LG&E/KU's system that has very low penetrations of traditional DERs and where further customer adoption of new DER could be integrated with more modern technologies such as smart inverters. The ***Commission encourages*** LG&E/KU to ground future analysis in the current and forward-looking circumstances it faces, not other utilities face.[7] (emphasis added)
>
> …
>
> The ***Commission is troubled*** that LG&E/KU have identified a substantial, ratepayer-funded investment solution without already having evaluated more incremental and likely cost-effective solutions, such as implementing autonomous smart inverter functions.[8] (emphasis added)

It is certainly true that the Companies may ignore the Commission's encouragement and it is equally true that the Companies may discount the Commission's concern. Encouragement and concern, however, are simply not actionable. The Companies fail to identify any error in the Commission's September 24, 2021, Order through their argument in Section VIII. There are no grounds for rehearing on this point.

WHEREFORE, for the foregoing reasons, KYSEIA respectfully requests that the Commission deny the Companies' Joint Petition to Reconsider as the September 24, 2021, Order

[7] (Ky P.S.C. Sept. 24, 2021), Order at 44.
[8] *Id.*, at 45

was consistent with both the law and evidence of record in these proceedings, and the Companies offer nothing new that warrants reconsideration.

Respectfully submitted,

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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 22nd day of October 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, March 24, 2020, and July 22, 2021 Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, the paper, in paper medium, is not required to be filed.

/s/ David E. Spenard
David E. Spenard

NOTICE REGARDING SERVICE

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

/s/ David. E. Spenard
David E. Spenard