

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

IN THE MATTER OF:	:	
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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
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IN THE MATTER OF:	:	
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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
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**PETITION FOR REHEARING OF  
THE ATTORNEY GENERAL AND  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“Attorney General”) and Kentucky Industrial Utility Customers, Inc. (“KIUC”) hereinafter referred to jointly as “AG/KIUC,” submit this Petition for Rehearing of the September 24, 2021 Order issued by the Kentucky Public Service Commission (“Commission”) in this matter (“Order”). A Memorandum in Support of AG/KIUC’s recommendations follows.

## MEMORANDUM IN SUPPORT

### **I. The Commission Should Expressly State That The Standard Rate Schedule Established In Its Order For Facilities Larger Than 100 Kilowatts Is Only The Starting Point For Negotiations With The Companies.**

While the Order establishes a standard rate schedule for Qualifying Facilities (“QFs”) larger than 100 kW, it does not expressly acknowledge that the standard rate schedule only forms the basis for negotiating a final purchase price with Kentucky Utilities Company/Louisville Gas & Electric Company (“KU/LG&E” or “Companies”). The Commission should grant rehearing in order to make this clarification. 807 KAR 5:054, Section 7(4) provides:

**(4) Rates for purchase of output of qualifying facility with design capacity over 100 kilowatts.** Each electric utility shall provide a standard rate schedule for qualifying facilities with design capacity over 100 kilowatts. The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. *These rates shall be used only as the basis for negotiating a final purchase rate with qualifying facilities after proper consideration has been given to factors affecting purchase rates listed in subsection (5)(a) of this section. Negotiated rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory.* If the electric utility and qualifying facility cannot agree on the purchase rate, then the commission shall determine the rate after a hearing.<sup>1</sup>

The Commission’s rules therefore treat the standard rate schedule for QFs larger than 100 kW merely as a starting point for negotiations and require electric utilities to conduct the Multi-Factor Inquiry set forth in both Kentucky and federal PURPA regulations before reaching a final QF purchase price.<sup>2</sup>

The required Multi-Factor Inquiry is a fundamental consumer protection that helps ensure that the QF purchase price is no higher than “*avoided cost*” and that retail customer rates are just and reasonable, consistent with Kentucky and PURPA mandates.<sup>3</sup> The Commission

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<sup>1</sup> Emphasis added. AG/KIUC raised this issue on page 13-14.

<sup>2</sup> 807 KAR 5:054, Section 7(5); 18 C.F.R. 292.304(b)(2) and (e).

<sup>3</sup> 807 KAR 5:054, Section 7(2) and 7(4); 16 U.S.C 824a-3(b).

recognized the potential need for such negotiations in the recent Kentucky Power rate case, wherein it explained that *“the Commission will still allow utilities and QFs, if they choose, to have agreements different than the tariff, subject to the Commission’s approval.”*<sup>4</sup> Accordingly, given the importance of this step in the final QF purchase price determination, the Commission should expressly state on rehearing that the standard rate schedule established in its Order for QFs larger than 100 kW merely serves as the initial basis for negotiations between the QF and KU/LG&E.

**II. The Commission Should Find That Any Qualifying Facility Contracts Will Be Subject To An On-The-Record Hearing In Which Interested Stakeholders Are Given Full Due Process Rights.**

In a similar vein, the Commission did not expressly address the Commission process that will apply when reviewing QF contracts. In addition to hearings compelled by 807 KAR 5:054, Section 7(4), 807 KAR 5:054, Section 9 requires that *“all contracts between qualifying facilities and electric utilities shall be provided to the commission for its review.”* AG/KIUC explained on Brief that, as part of this review, all contracts between QFs and KU/LG&E should be subject to an on-the-record hearing with full due process safeguards for intervenors.<sup>5</sup> As Pennsylvania has recognized, *“due process requires that, before the PUC may issue a declaration approving the legality of the terms and conditions of a contract for a utility’s purchase of power from a QF that includes payments for capacity, the utility’s customers must be provided with notice of the proceedings and an opportunity to be heard to challenge the proposed action.”*<sup>6</sup>

QF resources have the same direct and substantial impacts on retail customer rates as Commission-approved resources built by electric utilities. And critically, unlike net metering, there is no statutory cap on the amount of QF energy for which retail customers must pay.

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<sup>4</sup> Order, Case No. 2020-00174 (January 13, 2021) at 100.

<sup>5</sup> AG/KIUC Brief at 13-14.

<sup>6</sup> *Barasch v. Pa. Public Util. Com.*, 119 Pa. Commw. 81 (1988) at 104.

Accordingly, contracts between QFs and electric utilities warrant the same regulatory scrutiny that would apply to other potential electric utility generation resources, including an evidentiary hearing in which interested parties are allowed to intervene and participate.

### **III. The Commission Should Explain How It Intends To Implement The Updated PURPA Rules.**

As AG/KIUC noted, the Federal Energy Regulatory Commission recently revised its PURPA regulations in several major ways, including establishing a Competitive Solicitation Pricing option available to the states.<sup>7</sup> Pursuant to 16 U.S.C. 824a-3(f)(1), the Commission is required to implement those new regulations no later than December 31, 2021. But the Order does not address the Commission's intentions with respect to implementing the new PURPA regulations. On rehearing, the Commission should clarify those intentions.

### **CONCLUSION**

**WHEREFORE**, the Commission should grant rehearing and adopt AG/KIUC's recommendations in this matter.

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<sup>7</sup> AG/KIUC Brief at 4-6 (citing FERC Order 872, 173 FERC ¶61,158 (July 16, 2020)).

Respectfully submitted,

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/s/ Michael West

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