

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)	CASE NO.
TO DEPLOY ADVANCED METERING)	2020-00349
INFRASTRUCTURE, APPROVAL OF CERTAIN)	
REGULATORY AND ACCOUNTING)	
TREATMENTS, AND ESTABLISHMENT OF A)	
ONE-YEAR SURCREDIT)	

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

**KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.’S
RESPONSE TO KENTUCKY UTILITIES COMPANY’S AND
LOUISVILLE GAS AND ELECTRIC COMPANY’S
JOINT MOTION FOR LEAVE TO FILE SUR-REBUTTAL TESTIMONY**

Comes now the Kentucky Solar Industries Association, Inc. (KYSEIA), by and through counsel, and submits its Response to Kentucky Utilities Company’s (“KU”) and Louisville Gas and Electric Company’s (“LG&E” – collectively “Companies”) Joint Motion for Leave to File Sur-Rebuttal. The Commission has already established the procedural schedules for these proceedings, and the Companies fail to demonstrate good cause to amend them. Accordingly, the Joint Motion should be denied.

Background

A brief recitation of the facts concerning the procedural schedules for these cases will assist the Commission in reviewing the Joint Motion. Early in these proceedings, as is the standard practice, the Commission entered an Order of procedure in each docket.¹

The initial Orders of procedure entered on December 9, 2020, provided, among other things, the opportunity for intervening parties to file written testimony into the record on or before March 5, 2021.² The Orders further permitted discovery upon intervening parties.³ KYSEIA sponsored the pre-filed expert testimony of two witness, Justin R. Barnes, and Benjamin D. Inskeep. As the Companies in their Joint Motion readily and properly concede:

Mr. Barnes first presented this proxy unit method argument in his March 5, 2021 direct testimony but omitted the calculation and detailed hours now included in the rebuttal testimony to support his contention.⁴

Despite actual knowledge of Mr. Barnes' position, the Companies failed, in March, to request information concerning this part of Mr. Barnes' testimony. Comparatively, Commission Staff, in accordance with the Commission's Orders of procedure, propounded a data request upon KYSEIA on this issue for which a response was filed into the records on April 1, 2021.⁵

With actual knowledge of this issue and the response supplied into the records by KYSEIA on behalf of Mr. Barnes, the Companies had the opportunity during the three

¹ Case No. 2020-00349, Order (Ky PSC Dec. 9, 2020), Appendix; and Case No. 2020-00350 (Ky PSC Dec. 9, 2020), Appendix. (Hereinafter, unless otherwise stated, KYSEIA will reference the Orders only by the dates that the Orders were simultaneously entered in both dockets.)

² Order (Ky PSC Dec. 9, 2020), Appendix.

³ *Id.*

⁴ Joint Motion (filed Aug. 13, 2021), p. 2.

⁵ See KYSEIA's Response to Commission Staff's Second Request for Information, Item 3 (filed Mar. 19, 2021).

days of evidentiary hearing in April 2021, to further address the issue, including through the cross-examination of Mr. Barnes who was tendered as a witness for examination. As importantly, the Companies had the opportunity to conduct post-hearing discovery.⁶ Finally, the Companies were given the opportunity to submit both a post-hearing brief and a post-hearing reply brief, on May 24 and June 1, respectively.

Though fully empowered under the initial procedural schedules to conduct pre-hearing discovery, file rebuttal testimony, cross-examine Mr. Barnes, conduct post-hearing discovery, and file memoranda, the Companies did not pursue the issue. As KYSEIA did with regard to the request of Commission Staff, KYSEIA would have responded to a proper request from the Companies for information regarding this issue.

On June 30, 2021, after having determined that additional proceedings should be conducted to determine the reasonableness of the Companies' net metering and Qualifying Facilities proposals, the Commission entered Orders of procedure for the additional proceedings.⁷ By the express language of the Orders, the Commission determined that each party should pre-file ***simultaneous testimony***, be allowed one round of discovery requests, and have the opportunity to pre-file ***simultaneous rebuttal testimony***.⁸ The simultaneous pre-filing of both the testimony and rebuttal testimony would occur prior to an evidentiary hearing on the matters.⁹ The Orders of procedure for the additional proceedings did not state, nor even suggest, that the Companies would not have the opportunity to present proper rebuttal testimony at the evidentiary hearing.

⁶ Order (Ky PSC May 5, 2021).

⁷ Order (Ky PSC June 30, 2021), Appendix.

⁸ *Id.*

⁹ *Id.*

The Companies' grievance, through their Joint Motion, is that the Commission's existing Orders of procedure for the additional proceedings is deficient on due process grounds because, per the Companies, they must be given an additional opportunity to pre-file sur-rebuttal testimony (in essence, pre-emptive rebuttal testimony in advance of the scheduled evidentiary hearing).¹⁰ Their due process argument is wholly without merit, and the Joint Motion should be denied. Further facts will be identified in the course of KYSEIA's argument against the Joint Motion.

Argument: The Companies' Due Process Argument is Without Merit.

Due process requires a party to a Kentucky Public Service Commission proceeding know the evidence, and be "given an opportunity to test, explain or refute" the evidence through a meaningful opportunity to be heard.¹¹ Due process has been met.

The Companies acknowledge notice of this issue through the pre-filed testimony of Mr. Barnes placed into the records on March 5, 2021. They have had the opportunity to conduct numerous rounds of discovery, file their own testimony on multiple occasions, cross-examine Mr. Barnes, and file post-hearing memoranda. To date, the Companies have had ample opportunities to advance their due process rights.

Just as importantly, the Companies neglect to mention that, as is the standard practice during Commission hearings, they will be allowed to cross-examine Mr. Barnes, and offer rebuttal testimony following the close of the presentation of evidence by the intervenors. Finally, at minimum, they will again have the opportunity to be heard through post-hearing briefing of the issues. Due process will continue to be satisfied through the

¹⁰ Joint Motion (filed Aug. 13, 2021), p. 2.

¹¹ *Utility Regulatory Commission v. Kentucky Water Service, Co., Inc.*, 642 S.W.2d 591, 593 (Ky. App. 1982); see also *Mayfield Gas Co. v. Public Service Commission*, 259 S.W.2d 8, 10, 11 (Ky. 1953) (parties to a Commission hearing have a right to present evidence and be heard upon the evidence).

existing Orders of procedure and the standard Commission hearing process, including post-hearing briefing. Due process does not require the extraordinary procedure of pre-emptive rebuttal sought through the Joint Motion.

The Commission has not violated the Companies' due process rights through the June 30, 2021 Orders. The Companies fail to identify any actual threat to their due process rights to cross-examine Mr. Barnes or offer rebuttal testimony following the intervenors' presentation of evidence. There are no due process concerns present in the instant cases and no reason to amend the procedural schedules.

The Companies' complaint is that the Commission afforded KYSEIA the opportunity to file supplemental rebuttal testimony upon the Companies' evidence, and KYSEIA took advantage of that opportunity by commenting upon, as is its rights under the Orders of procedure, the Companies' supplemental testimonies filed into the records on July 13, 2021. The Joint Motion fails to identify any provision of law that prohibits KYSEIA from presenting additional evidence and argument upon this issue.

If the Companies desire to conduct proper cross-examination of Mr. Barnes on this issue, they may do so at the upcoming evidentiary hearing. If after the completion of Mr. Barnes' testimony, the Companies desire to offer proper rebuttal testimony upon an issue directly discussed by Mr. Barnes during his examination, they may do so. The foregoing is standard Commission procedure, and it satisfies due process. Pre-emptive rebuttal testimony is neither necessary to meet due process nor advisable under the Commission's standard process for conducting hearings. The Joint Motion should be denied.

WHEREFORE, for the foregoing reasons, KYSEIA respectfully requests that the Companies' Joint Motion be denied.

Respectfully submitted,

/s/ David E. Spenard

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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 16th day of August 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