COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter 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 SUR-CREDIT	)	**Case No. 2020-00349**

AND

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 SUR-CREDIT	)	**Case No. 2020-00350**

SUPPLEMENTAL REBUTTAL TESTIMONY OF KARL R. RÁBAGO ON BEHALF OF JOINT INTERVENORS

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August 5, 2021

REBUTTAL TESTIMONY OF KARL R. RÁBAGO

Q. Please state your name, business affiliation, and on whose behalf you are appearing.

A. I am Karl R. Rábago, principal of Rábago Energy LLC. I appear on behalf of Joint Intervenors.

Q. Are you the same Karl R. Rábago who previously testified in this proceeding?

A. Yes.

Q. What is the purpose of your testimony?

A. I am testifying to rebut fundamental underlying assumptions, assertions, and approaches revealed in the testimony of the witnesses for Kentucky Utilities Company and Louisville Gas and Electric Company ("Companies") in this Supplemental proceeding.

Q. Did you review the supplemental testimony of the utilities' witness Conroy on the issue of addressing job creation in the calculation of an appropriate compensation rate for exported energy from net metered facilities?

A. Yes.

Q. What is your rebuttal to that testimony?

A. First, witness Conroy's testimony reports broadly worded language from prior Kentucky Public Service Commission ("Commission") decisions that involve the interpretations of those Commissions of their statutory authority. With all due respect to prior Commissions and Commissioners, it is the ongoing duty of sitting Commissions to interpret the authority—especially relatively new authority—that their legislatures have granted them, updated as necessary for current circumstances, and tailored to the cases presented for decision. The instant cases relate to assessing a just and reasonable compensation value embodied within a specific rate for exported energy under a net

metering service tariff. The question of whether the Commission should consider employment and other economic development activities resulting from the increased deployment of electric generation and the associated rates is within the proper scope of assessment of rates and services and whether those rates are just, fair, and reasonable.

Second, as a former utility commissioner, I would be surprised if the Commonwealth's primary economic regulators did not consider the job impacts of its decisions relating to utility rates and services. The lengths to which the Companies' witness goes in a failed effort to distinguish economic development rates only serves as testament to the relevance of economic impacts—including job impacts—to Commission decision making.

Third, the Companies' position is at its heart discriminatory and at odds with best practices relating to the evaluation of costs and benefits of energy resources. The Companies are perfectly comfortable touting the economic development benefits of self-build resources they propose and the load-building activities, like economic development rates, that it advances to generate increases in its' revenue requirements and profits. To take the exact oppositive view of the positive economic development benefits associated with non-utility generation is on its face unreasonable and discriminatory. It appears the only real distinction is that customer generation does not add to the rate base and is even more economic than some of the existing rate base of the utilities. This issue reinforces the need for and wisdom in the Commission adopting the principle that benefits and costs must be treated symmetrically, as stated in the KPC order.[1]

[1] Commission Order in 2020-00174 at 22.

Q. Did you review the supplemental testimony of other utility witnesses relating to the calculation of avoided costs and the identification of costs avoided by distributed generation?

A. Yes.

Q. What is your rebuttal to that testimony?

A. The Companies' supplemental testimony sets out the monopolist's preferred approach to calculating avoided costs, which is not surprising. The testimony sets out formulas and methods for the lowest avoided cost calculations, and in doing so, crosses the line into unreasonableness. My testimony and that of Mr. James Owen, as well as testimony from KYSEIA witnesses, sets out and provides citations to methods for fairly valuing distributed generation energy production and exports in a non-discriminatory fashion, so I will not repeat it here. I will note that our previously filed testimony adheres to the principles adopted by the Commission in the KPC order.[2] It is appropriate that I emphasize two fundamental and repeated flaws in the Companies' testimonies.

Q. What are those flaws and why are they important?

A. First, the Companies commit a category error by continuing to propose to treat distributed customer generation the same as wholesale utility-scale generation. The utilities continue to propose treating generation for use in the same manner as generation for sale for resale. This proposed limitation does not appear in the Kentucky net metering statute.[3] The utilities continue to presume that customer generation exports, which are incidental to production for use, have little or no value because they are small, not addressed in

[2] *Id.*
[3] Ky. Rev. Stat. § 278.466(3).

wholesale contracts or tariffs, or are ignored and unmeasured by the utilities. The utilities continue to ignore the fact that customer generation produces energy that offsets full retail sales by the owner customer and injects or exports excess energy at a time and place such that it is immediately used by the other load in the nearby grid. The utilities continue to ignore that excess net metered generation gives rise to bill charges when it passes through the meter to serve that nearby load, yielding full retail value for the utilities. That excess, billed-for generation takes the place of utility-provided generation and all the infrastructure, transmission, and delivery costs associated with serving that load with energy and capacity that the utility otherwise would incur. If properly forecasted and allowed to grow to full economic potential, that excess customer generation would further reduce system costs and provide increasing benefits to all the customers by substituting for more expensive resources that the utility would otherwise have to provide. Excess customer generation is not the same as wholesale generation, and to treat it as such is unfair to customer generators and does not accurately account for its value as a resource. It is a different resource no matter how stridently the utilities and their witnesses assume otherwise.

Q. Please provide examples of this flawed approach in which the utilities propose to treat excess distributed generation as if it were wholesale generation for sale for resale.

A. Companies witness Seelye insists that distributed solar, which produces capacity at or very near the point of load, should receive no capacity credit because distributed solar facilities do not have PPAs with the utilities, and because when the utility overbuilds capacity, the capacity value of any increment of additional capacity, even if less

expensive than existing capacity, has a capacity value of zero.[4] Witness Sinclair proposes that the energy value of net metered generation be unreasonably calibrated against a two-year PPA price for avoided energy "[b]ecause the vast majority of net metered customers employ fixed tilt solar technology."[5] The tilt technology has nothing to do with any basis for decrementing the value of a unit of excess exported energy. It appears from witness Sinclair's testimony as a whole that the basis for the punitive and confiscatory proposed value is linked to shortest-possible contract term. That is, it appears that witness Sinclair would value excess customer generation much lower simply because customer generators have not executed multi-decade wholesale PPAs with the utilities. For what appears to be similar reasons, witness Sinclair joins with witness Seelye in proposing no credit for avoided generation capacity for excess customer generation. This approach is nonsensical given the fact that net metered generation, once installed, is likely to continue operating in highly predictable ways for three decades or more, even without a PPA. The approach is also discriminatory against customer generators (generation for use) who are seeking relief from high electric bills through self-generation, and who should not have to become generation contracting experts (generation for sale for resale) in order to receive fair compensation for the value of their incidental energy exports.

Witnesses Sinclair and Seelye repeat the utilities' long-standing failure to recognize that customer-generated renewable energy avoids future carbon emissions and therefore has value as a cost-reducer under potential carbon regulatory systems. Future compliance costs for carbon emissions are a practical planning certainty, as is the fact

[4] Seelye supp. direct test. at 22, et seq.
[5] Sinclair supp. direct test. at 19, lines 21-22.

that the Companies will seek to pass compliance costs onto Kentucky customers. The Companies' position continues to be out of step with sound utility planning, and unreasonably requires customer generators to become professional emissions and REC traders in order to realize a fair value for avoided future carbon control costs. The Companies' witnesses take the further step of asserting that there is no future value of avoiding future emissions because there is no current law or regulation in Kentucky that prices carbon emissions.[6] While federal avoided cost regulations may limit the inclusion of future avoided environmental costs in current avoided cost rates for wholesale generation under current interpretation of the limited powers of the federal government, the authority of the Commission to require the monetization of value for avoided retail costs under the Constitutional authority that states enjoy in accordance with their police powers is not so circumscribed. To expect the Commission to circumscribe its statutory authority to set just and reasonable rates in order to treat excess customer generation like wholesale power sold under contract is improperly discriminatory. This discrimination means the Companies' overall approach to proposing their NMS-2 tariffs is not just and reasonable.

Q. What is the second major flaw that you want to raise?

A. Second, the Companies would assign a value of zero or minimize the assigned value of excess customer generation based on situations where the utilities have chosen to ignore or not to analyze, measure, or even collect key data about the costs and benefits of distributed generation operations.

[6] Sinclair supp. direct test. at 20, line 6 through 21, line 10; Seelye supp. direct test. at § VIII.

Witness Seelye says that while small qualifying facilities provide hedging value, that value should be ignored because the Companies chose to expose customers to all fuel price risk.[7] Witness Seelye would ignore the actual capacity value of small solar generation because the generators do not have a contract to provide that capacity, an approach that places form over substance.[8]

Witnesses Seelye and McFarland believe the Companies can and should ignore any transmission capacity benefits of distributed generation because it is "unlikely" that net metering would help avoid such costs.[9] The Companies "have not been able to identify any avoided costs related to the energy that customer-generators supply to grid."[10] Much of the explanation for this inability to calculate value for distributed generation may be the Companies' historic and expected success in stifling the economic potential and growth of distributed generation.[11] The Companies' biased assumptions about 'likelihood' and decisions to ignore or treat as *de minimis* distributed generation impacts on planning decisions do not mean there is no transmission-related value associated with distributed generation exports—it just means the Companies have decided not to fairly quantify such value and to assume that their generation sector hegemony will remain unchallenged and unchanged.

Witness McFarland conflates the economic concepts of "sunk costs" and "fixed costs" to assert there can be no impacts of increased future distributed generation on

[7] Seelye supp. direct test. at § V.
[8] *Id.*
[9] Seelye supp. direct test. at § VI; McFarland supp. direct test. at § II.
[10] Seelye supp. direct test. at § VI, p. 25, lines 17-18.
[11] McFarland supp. direct test. at 4, line 11 through 6, line 6.

existing infrastructure and uses this as a justification for ignoring such impacts entirely.[12] Of course, what underlies the witness McFarland's argument is an assumption that the Companies are entitled to full recovery of all sunk costs, regardless of how excessive, unused, and un-useful they may become in a world of increased distributed generation. This assumption is not a justification for not doing the analysis. It is entirely reasonable to require the utilities to assess the impact of distributed generation on sunk and future fixed costs.

In addition to joining in the argument that the Commission has no authority to consider job creation as a general matter, witness Seelye asserts that the Commission cannot consider a jobs creation benefit provided by distributed generation deployment because "jobs creation would not affect the Companies' cost of providing service."[13] Of course, just as economic development rates benefit all rate payers by ultimately inducing both direct and indirect increases in employment, the benefits of the growth of a distributed generation industry in the Companies' service areas would impact costs and revenues. The Companies choosing not to evaluate these impacts does not mean they are not real.

Q. In light of these findings, how should the Commission weigh the Companies' supplemental testimony on valuing excess customer generation?

A. The foundations of the Companies' approach are flawed, and the proposals by the Companies are therefore unreliable and should be given little or no weight in this supplemental proceeding. Distributed customer generation is not utility-scale wholesale

[12] McFarland supp. direct test. at 2, lines 7-9.
[13] Seelye supp. direct test. at 29, lines 9-11.

generation. The costs and benefits of each are different; the owners and operators are different; the locus of operations is different. The values of the resources are different. The Companies' continued effort to pay only wholesale rates for retail electricity is understandable but fundamentally flawed.

In addition, the Companies have access and control over the detailed and specific information about the impacts of distributed generation on the grid and the potential impacts on future costs. The Companies cannot be allowed to use their assumptions and unwillingness to gather and share actual data about value as a basis for asserting that value does not exist. This is the reason that I have continuously urged the Commission to require a transparent, comprehensive, objective, and participatory analysis of the distributed generation value. The Commission's NMS Methodology which it adopted in the KPC case provides a reasonable method for assessing a fair compensation value for excess generation at this time, but more, and more objective data is needed, especially if the market for distributed generation is allowed to grow.

Q. Does this conclude your rebuttal testimony?

A. Yes.

VERIFICATION

The undersigned, Karl R. Rábago, bring first duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing Supplemental Rebuttal Testimony filed this 5th day of August, 2021, and that the information contained therein is true and correct to the best of his information, knowledge, and belief, after reasonable inquiry.

Karl R. Rábago

Subscribed and sworn to before me by Karl R. Rábago this 5 day of August 2021.

Notary Public

My commission expires 3-27-24

LORI KRISTEN HOWELL
Notary Public
State of Colorado
Notary ID # 20204011760
My Commission Expires 03-27-2024

CERTIFICATE OF SERVICE

This is to certify that this electronic filing of the *Supplemental Rebuttal Testimony of Karl Rábago On Behalf of Joint Intervenors* has been transmitted to the Commission on August 5, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that in accordance with the July 22, 2021 Commission Order in Case No. 2020-00085 and notwithstanding 807 KAR 5:001 Section 8(3), no original paper copy of this filing will be filed with the Commission.

Tom FitzGerald