

**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) **Case No. 2020-00349**
INFRASTRUCTURE, APPROVAL OF CERTAIN)
REGULATORY AND ACCOUNTING)
TREATMENTS AND ESTABLISHMENT OF)
A ONE YEAR SUR-CREDIT)**

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) **Case No. 2020-00350**
ADVANCED METERING INFRASTRUCTURE,)
APPROVAL OF CERTAIN REGULATORY AND)
ACCOUNTING TREATMENTS AND)
ESTABLISHMENT OF A ONE YEAR SUR-CREDIT)**

POST-HEARING BRIEF OF JOINT INTERVENORS

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May 24, 2021

INTRODUCTION

On May 3, 2021, the Public Service Commission (“Commission”) entered an Order directing that “[a]ll parties shall file a memorandum brief in support of their respective post-hearing positions on or before May 24, 2021. Briefs shall include support for the proposed settlement and each party’s position as to the cogeneration tariff and net metering issues even though those issues will remain the subject of additional proceedings.” The Commission Order further noted that after the filing of this initial memorandum brief and any responsive brief (to be filed on or before June 1, 2021), [t]his case shall stand submitted for a decision by the Commission effective 12:01 a.m., Eastern Daylight Time on June 2, 2021 with the exception of issues pertaining to the cogeneration tariff and net metering issues (Riders NMS-1 and NMS-2) which will be the subject of additional discovery and potentially a second hearing.”

Joint Intervenors Mountain Association (“MA”), Kentuckians For The Commonwealth (“KFTC”), and the Kentucky Solar Energy Society (“KYSES”) in Case No. 2020-00349, and KFTC, KYSES and the Metropolitan Housing Coalition in Case No. 2020-00350, file this initial memorandum brief in response to the May 3, 2021 Commission Order, addressing first the *Stipulation and Recommendation* filed in each case, to which the Joint Intervenors are signatories, followed by the position of the Joint Intervenors with respect to the cogeneration tariff and net metering issues.

For the reasons outlined below, Joint Intervenors support the *Stipulation and Recommendation* in each case and respectfully request approval of same by the Commission, (subject to any revisions or changes that the Commission finds necessary or advisable), and encourages the Commission to reject the proposed Net Metering II tariff as unjust, unreasonable, unfair, and unsupported in law or in fact. Joint Intervenors respectfully request, in light of the

Commission’s May 14, 2021 Order in the case of *In the Matter Of: 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*, Case No. 2020-00174 (“May 14, 2021 KPC NMS Order”) that the net metering tariff proposed by Louisville Gas & Electric Company and Kentucky Utilities Company, (“LGE/KU”) be rejected and that after an additional opportunity for serving of data requests on LGE/KU, all parties be allowed to submit Supplemental Testimony addressing those revisions to the proposed Net Metering Service Tariff 2 (“NMS-2”) that would be needed in order to satisfy both the requirements of KRS Chapter 278 and the principles outlined by the Commission in the May 14, 2021 *KPC NMS Order*.

I. JOINT INTERVENORS SUPPORT THE *STIPULATION AND SETTLEMENT* IN CASE NOS. 2020-00349 AND 2020-00350 AND BELIEVE THEM TO BE FAIR, JUST, AND REASONABLE AS PRESENTED IN THEIR ENTIRETY

Joint Intervenors support the *Stipulation and Recommendation* in each case and respectfully request approval of same by the Commission, (subject to any revisions or changes that the Commission finds necessary or advisable). By counsel, Joint Intervenors participated in the negotiations leading to the *Stipulation and Recommendation* in both Case No. 2020-00349 and Case No. 2020-00350, and believe that the package of resulting revisions and modifications of the original LGE/KU case filings, make the outcome fair, just, and reasonable when considered as a whole.

As with any negotiated resolution involving the “give and take” among parties with divergent interests and the incumbent utilities, there are aspects of the final *Stipulation and Recommendation* that Joint Intervenors would prefer to have been resolved differently. Yet in

arriving at a negotiated compromise among the positions of parties representing a broad and diverse constituency of rate classes and ratepayers, including business, industrial, municipal, and residential, the resulting components of the *Stipulation and Recommendation* stand individually and as a whole, to be fair, just, and reasonable.

Of particular interest and concern to the Joint Intervenors are the impacts of rate design and rate changes on low- and fixed-income residential ratepayers, on small businesses with whom the Mountain Association works, and on the future of rooftop solar in the services areas of the two utilities. The *Stipulation and Recommendation* (“S&R”) addresses those concerns through a number of provisions:

- The *Stipulation and Recommendation* “carved out” and deferred the cogeneration and net metering tariff issues so that they could be further explored, briefed, and addressed later in this proceeding in an efficient manner consistent with the principles that the Commission has now enunciated in the May 14, 2021 *KPC NMS Order*, S&R. Section 5.8
- The stability and predictability in utility costs from the four-year “stay-out” commitment (with certain enumerated exceptions) regarding any changes in the base-rates approved in Case Nos. 2020-00349 and 2020-00350, with a commitment not to file any base-rate applications before 2024, S&R Article 1;
- All ratepayer classes benefit from the agreed-upon reduction in the overall increases in electric and gas rates from what had been proposed, S&R Sections 2.1, 3.1, and from
- A reduction in the return on equity to an agreed-upon 9.55% for gas and electric services;¹ S&R Sections 2.2(A), 3.2(A);

¹ While the testimony filed by Intervenors could have supported a lower ROE, the elevated risk of underperformance associated with the four-year stay out was thought by all to justify the 9.55% ROE.

- Residential customers gain predictability and a greater opportunity to manage electric and gas utility costs from the agreement that residential basic service charges will remain unchanged from current levels until at least 2025, S&R Section 4.3;
- Agreement to defer any consideration of cost recovery associated with deployment system-wide of Advanced Metering Infrastructure will assure that prior to a determination of whether there are costs and how such costs should be allocated, the assets will be used and useful, and the benefits of such use to both the utility and to customers can be evaluated, S&R Section 5.2;
- Protections afforded to residential customers from a commitment to maintain current data use and customer service disconnection policies, and that any changes in either policy will be considered at earliest in the first base rate proceedings following AMI deployment; S&R Section 5.2.(F);
- The commitment of LGE/KU to engage in a stakeholder process using the Utilities' existing DSM Advisory Committee for their next DSM filings to consider and evaluate Peak-Time Rebates and an on-bill financing program could provide new mechanisms to help overcome capital barriers to energy efficiency and incorporation of renewable technology, and a new mechanism to incentivize load-shifting to off-peak periods; R&S Section 5.6; and finally,
- The assistance for utility bills for ratepayers with low income that has been pledged by LGE/KU shareholders will rise proportionately with the overall increases in revenue requirements resulting from these proceedings, thus helping to assure concurrency in home heating assistance with the cost increases. S&R Section 5.7.

For these reasons in particular, and in consideration of the overall terms and conditions of the April 19, 2021 *Stipulation and Recommendation* filed in both Cases No. 2020-00349 and 2020-00350, Joint Intervenors respectfully request approval of the settlement by this Commission.

II. THE NMS 2 TARIFF PROPOSED BY LGE/KU IS INCONSISTENT WITH KRS CHAPTER 278 AND RESULTS IN A PROPOSED COMPENSATORY RATE THAT IS CONFISCATORY AND PUNITIVE IN NATURE

In the May 3, 2021 *Order*, the Commission directed the filing of post-hearing briefs addressing both “support for the proposed settlement,” which Joint Intervenors have addressed *supra*, and “each party’s position as to the cogeneration tariff and net metering issues even though those issues will remain the subject of additional proceedings.”

This section of the Post Hearing Brief of Joint Intervenors outlines their position with respect to the net metering and related interconnection issues. The third and final section of this brief will address the cogeneration tariff.

The NMS 2 tariff proposed by LGE/KU should be rejected at this time because the proposed compensatory rate for electricity generated by an “eligible customer-generator” and “fed back to the electric grid” fails to account for the full value of the that electricity and is confiscatory and punitive in effect. Additionally because of numerous representations by LGE/KU that submittal of an application to take NMS service prior to the final Order in the case approving a different NMS Tariff, would be sufficient to confer legacy status on that customer with respect to NMS Rider 1, LGE/KU should be bound by those representations in order to avoid further disruption to the investment-backed expectations of customers and those who install and service solar arrays for these customers.

Finally, with respect to the cogeneration tariff, Joint Intervenors defer to and adopt the position of KYSEIA in that regard.

A. The Proposed NMS 2 Tariff Should Be Rejected Because The Proposed Compensatory Rate For Electricity Generated By An “Eligible Customer-Generator” And “Fed Back To The Electric Grid” Fails To Account For The Full Value Of The That Electricity And Is Confiscatory And Punitive In Effect

LGE/KU has proposed to reduce the value of all electricity fed back into the grid at any time during a billing period, from the current 1:1 valuation, to the compensatory rate that is given to Small Qualifying Facilities under PURPA.

The utilities have not proposed any change in the basic service charges for NMS customers, but have proposed a reduction in the compensatory rate for electricity fed into the grid pursuant to KRS 278.466(3), without any consideration of the value or benefits of the fed-in-solar to the grid and to other customers.

The effort by the company to isolate the question of the appropriate compensatory rate for net-metered fed-in solar from any consideration of benefits, conveniently sidesteps considerations that are essential to a determination of a fair, just, and reasonable compensatory rate.

Underlying the proposal to significantly reduce the compensatory rate for fed-in NMS energy is the questionable assertion that non-participating ratepayers within a class are “subsidizing” those who chose to install, at their own cost and risk, rooftop solar and to take service under the current NMS tariff. The theory is alternatively presented as (a) the participating ratepayer is not paying their “fair share” of the fixed costs imbedded in the volumetric charges because they are using less of the utility-generated electricity; or (b) that because the participating customer is being credited at the same rate for electricity used and that fed back, the nonparticipating customers are paying for that compensatory increment between

the avoided cost of a utility-generated kilowatt hour, and the higher retail value being accorded that fed-in electricity.

Under either approach (and the utilities and their witnesses shifted between them frequently over the course of three days of hearing), it cannot be stated that crediting the fed back electricity at the higher rate is either a subsidy by other customers in that class, or is more costly than electricity that the utility could generate, without considering the benefits and value provided by that electricity that offset those costs that would have otherwise been incurred and are “avoided” due to the introduction of renewable distributed generation from rooftop solar arrays.

Witness Conroy explained (albeit inadvertently) why the benefits must be considered in determining true cost and appropriate compensatory credit. When asked whether the non-participating residential customers who pay \$12.00 per year to support DSM programs but who, either by choice or circumstance do not avail themselves of those program offerings, are subsidizing those who participate in the DSM programs, Conroy responded that the \$12 per year DSM program charge does not constitute a subsidy from non-participating to participating customers.

Q: So, let me see if I got this right. So, you offer an array of programs that not everyone uses but may have the access to. You charge them a buck a month, on average, for those program offerings, or \$12 a year. And those programs are being paid for by non-participating customers as well as participating customers. And we’re here today talking about a ten cent a year alleged subsidy on net metering. Is that correct?

A. I would not call DSM a subsidy. I mean those passed cost-benefit tests and they benefit the whole system. What we’re talking about in net metering is what is the appropriate cost for all customers to pay for energy that is provided onto the grid and the appropriate cost is the avoided cost rate for what we could have otherwise generated.

April 28, 2021 Hearing, 9:31:43 through 9:37:42.

Conroy acknowledged that no cost effectiveness test was used to determine what was the “appropriate cost” of energy fed back into the grid “that all customers pay.” *Id.* 9:35:20 – 9:35:30. Finally, when asked whether the value of the fed back solar was considered in determining whether the cost paid was appropriate, Conroy indicated that it was not.

Q. Does the proposed reduction in the value of fed-in solar to match the SQF value consider any of the benefits of rooftop solar to the grid and to other customers?

A. Again, we did not look at the value that you are proposing – we looked at what is the appropriate cost for all customers to incur for energy that flows onto the system.

April 28, 2021 Hearing, 9:48:54 – 9:49:40.

Joint Intervenors concur with the analysis of the Commission in the May 14, 2021 *KPC NMS Order* that in setting the appropriate export rate for electricity fed back into the grid by a net-metering eligible customer-generator, there are certain “principles for compensation for eligible customer-generators” that must be considered in determining what is that appropriate compensatory credit.

The Commission identified these principles as being essential in determining the appropriate value:²

- Evaluate eligible generating facilities as a utility system or supply side resource. Because eligible customer-generators and their eligible generating facilities can meet power system needs, they should be compared with other energy resources using consistent methods, processes, and assumptions.

² The Commission noted earlier in the May 14, 2021 *KPC NMS Order* at p. 7 that “avoidance of a cost is a system benefit.” Yet in the LGE/KU case, as noted above, witness Conroy states that the company acknowledged that no consideration was given to the system benefits associated with the fed-in solar energy. One cannot properly value that fed-in solar so as to determine the appropriate compensatory credit, absent such an analysis. While PURPA constrains how an “avoided cost” is determined for purposes of wholesale generation governed by that law, this Commission is not so constrained, and is, as was indicated in the Smith Letter and as has been demonstrated in the May 14, 2021 *KPC NMS Order*, able to consider the full range of quantifiable benefits in determining net costs and appropriate compensatory credit for that fed-in energy.

- Treat benefits and costs symmetrically. KRS 278.466(5) provides that electric utilities are “entitled to implement rates to recover . . . all costs necessary to serve its eligible customer-generators.” This is because an evaluation consisting of only the costs incurred by Kentucky Power would be deficient if the evaluation failed to consider known or reasonably expected measurable positive effects, or benefits, that accrue to Kentucky Power. Thus, to avoid bias, it is important to weigh the costs and benefits of a resource symmetrically. As we found in Case No. 2019-00256, “[t]he Commission must develop a process that identifies known or reasonably expected measurable costs and benefits that can be factored into the ratemaking process” for net metering rates that compensate eligible customer-generators for energy exported to the grid. While the record in this case does not offer quantitative evaluations of benefits and costs, the parties’ qualitative arguments demonstrated the need to evaluate a broad range of known or reasonably expected measurable benefits of eligible customer-generators, leading the Commission to incorporate additional avoided cost components beyond those proposed by Kentucky Power.
- Conduct forward-looking, long-term, and incremental analysis. A utility makes economic decisions that consider the entire life of a project, and such long-term analysis should also apply to an eligible customer-generator. Given that the typical warranty provided by a solar panel manufacturer is 25 years, this would be an appropriate analysis period for Kentucky Power’s net metered customers.⁷¹ A long-term approach ensures unbiased evaluation of system resources, ensures ratepayers are paying fair value for avoided future costs, and compensates eligible customer-generators fairly.
- Avoid double counting. There is a risk of counting certain benefits or costs more than once if they fall into multiple categories of benefit or cost. All impacts should therefore be clearly defined and carefully quantified.
- Ensure transparency. Transparency creates trust between parties and allows for a robust public process around resource evaluation. All relevant assumptions, methodologies, and results from any party should therefore be clearly documented and available for stakeholder review and input.

May 14, 2021 *KPC NMS Order*, pp. 21-24.

As the Commission properly observed, while these best practices principles were offered by Joint Intervenors in that case in the context of compensating eligible customer-generators, “similar principles apply to rate design[:].”

For a net metering tariff, design principles are relevant not only to the export rate structure, but also to the underlying retail rate that customer-generators pay for their energy consumption. When considering rate designs for either export or consumption, it is important to consider the above principles alongside the additional principles of stability and simplicity.

Id. at pp. 23-4.

Joint Intervenors believe that two additional sets of data requests, followed by Supplemental Testimony on behalf of both the companies and Intervenors (as they so desire) addressing the appropriate export rates “based on avoided cost as modified” to reflect “best practices in developing successor net metering rates,” is needed in order to arrive at export rates that are “fair, just and reasonable” to all parties. In the subsequent proceedings in this case, Joint Intervenors will further explore through data requests and will further provide testimony from a qualitative and quantitative standpoint, on the value that should be accorded those component avoided costs that the Commission identified in the May 14, 2021 *KPC NMS Order* as being essential to determining the appropriate compensatory credit rate.

As the Commission determined in the May 14, 2021 *KPC NMS Order*, those avoided costs should be based on defensible methodologies including forward-looking information and should include: avoided energy costs, avoided generation capacity costs, avoided transmission capacity costs, avoided ancillary service costs, avoided distribution capacity costs, avoided carbon cost, avoided environmental compliance costs, quantifiable jobs and economic development benefits, and the cost savings from providing a fair compensatory rate for solar customers under an NMS tariff in order to avoid those customers opting to participate in the wholesale market FERC Order 2222 at a higher cost to the utility (and other customers).

LGE/KU has provided no justification or basis in this proceeding for the bald assertion that the SQF avoided cost rate established for wholesale power under PURPA is appropriate or relevant to the Commission’s determination under KRS Chapter 278 of the “avoided cost” and appropriate compensatory credit with respect to NMS customers, and as such must be rejected as failing to meeting the utility’s burden under KRS 278.466.

While grounding the proposed radical reduction of the compensatory credit rate on reference to the PURPA SQF rate rather than on the avoided costs (and corollary benefits) of energy from grid-connected NMS customers, at several points during the 3-day hearing, company witnesses implied that any consideration of those benefits would have to be offset by potential additional *costs* specific to serving net metering customers. It is apparent from the *Response of Kentucky Utilities Company and Louisville Gas and Electric Company To Supplemental requests of Joint Intervenors Mountain Association, Kentuckians For The Commonwealth, Kentucky Solar Energy Society, And Metropolitan Housing Coalition's Post-Hearing Request For Information* (“LGE/KU Post-Hearing Responses”) that there is no empirical basis for the suggestion that costs have been incurred in connection with serving NMS customers and that representations to the contrary are naught but rank speculation. There is no evidence of record that Net Metering has had any adverse effect on historical investments; only that NMS customers use those investments less (particularly during summer peaks) and thus help extend the life of the facilities and relieve congestion and load, all based on customer investments:

- “[a]t this time, the Companies have not incurred any costs related to technical electrical operations of the grid to serve NMS customers [and that] until the number of NMS customers on a circuit increase, costs for hosting NMS accounts will be minimal[:.]” Currently, NMS customer DER accounts for between 0% and 3% of peak load on individual circuits. Costs are not expected to increase until concentrated groupings of DER interconnections occur, or DER penetration nears “15% of the Line Section’s most recent annual one-hour peak load limit” as defined by the Kentucky Interconnection and Net Metering Guidelines. *LGE/KU Post-Hearing Responses* A-1.
- “[T]he Companies have been able to accommodate net metering customer interconnections without making any significant modifications or upgrades to distribution system components.” *Id.* at A-2.
- “The Companies have not yet identified any technical operations issues related to operations of currently interconnected net metering generation facilities.” *Id.* at A-3.

- The Companies have not prepared any projections of increasing and incremental technical system costs anticipated to relate primarily or exclusively to the installation and operations of net metered generation facilities. *Id.* at A-4.
- “The Companies have not prepared a hosting capacity analysis on a circuit or feeder level due to relatively low levels of installed DER on individual circuits. Utilities typically do not perform DER hosting capacities until DER nears 15% of peak load on a given circuit, power quality issues arise, or if regulatory entities require such studies.” *Id.* at A-5.
- ”The Companies have not formally evaluated the potential impact of grid modernization activities on the system’s ability to interconnect future net metering facilities. However, the implementation of a centralized distribution management system, volt/VAR optimization, DERMS, and other DMS functions are expected to provide positive impacts on DER interconnection.” *Id.* at A-6.

Given these acknowledgments, the speculative testimony of company witnesses with respect to additional costs associated with serving net metering customers - should be discounted entirely.

There is no incremental cost to the utilities or other customers associated with serving NEM customers or for “handling” any fed back energy. Indeed, the companies admit in those responses that such costs will not be material until penetration reaches 15% at the earliest, and that the utilities have no plans to even try to measure such costs on an average or incremental basis.

B. LGE/KU Should Be Bound By The Multiple Public Representations It Has Made That Any Customer Who Has Filed An Application To Take Service Under the NMS 1 Tariff Prior To The Effective Date Of Rates Established In A Final Commission Order In These Proceedings Will Be Accorded The 25-Year Legacy Status

The Direct Testimony of company witness Conroy, at Page 23, Lines 8-10 plainly indicated that NMS 1 would serve customers who “have submitted an application for NM Service before the effective date of rates established in these proceedings.” Yet at hearing, witness Conroy testified that the companies were not making such a commitment. *April 28, 2021 Hearing, 9:07:40 – 9:07:52.* The witness suggested that his written testimony was merely clarifying that in addition to being “in service,” an eligible customer-generator would have to file

an application for service. Yet his written testimony did not indicate that to be eligible under NMS I, the customer would *both* have to file an application *and* be “connected to our system” and be generating energy from a renewable source. Nor does the written testimony make sense if it was intended to merely state one of the preconditions of being “grandfathered” under NMS 1, since the witness acknowledged on questioning that a customer can’t take service under an NMS Tariff without filing an application. *April 28, 2021 Hearing* at 9:10:48 – 9:11:08.

The questioning of witness Conroy by Vice-Chair Chandler and by counsel for KYSEIA further underscored that the public notices provided to LGE and KU customers and published for the general public did not indicate that the customer would have to have a system interconnected and in operation by the time of the final order in this case establishing a replacement NMS tariff rather than have filed an application in order to be eligible for NMS 1 Rider legacy status.

The Certificate of Completed Notice (“Certificate”), in Commission Case No. 2020-00350 represented that an abbreviated Customer Notice of Rate Adjustment had been published in seventeen newspapers in the LGE service area. A similar Certificate was filed in the KU Case, No. 2020-00349.

The Customer Notice of Rate Adjustment attached to that Certificate in the LGE case reads in pertinent part that:

LG&E is proposing a new net metering rate schedule, Rider NMS-2, and renaming its existing Rider NMS to be Rider NMS-1. Rider NMS-1 will serve eligible electric generating facilities as defined in KRS 278.465(2) for which customers have submitted an application for net metering service before the effective date of rates established in this proceeding. Rider NMS-2 will apply to all other net metering customers. LG&E is also proposing new terms and conditions for Net Metering Service Interconnection Guidelines.

(Emphasis added).

The Certificate further certified that:

[B]eginning on the 18th day of November 2020, LG&E posted on its website a copy of the more detailed and lengthy notice that 807 KAR 5:001, Section 17 requires and a hyperlink to the location on the Commission's website where the case documents and tariff filings are available. Beginning on the 25th day of November 2020, LG&E posted on its website a complete copy of LG&E's application in this case. Both the notice being published in newspapers and the bill inserts being sent to customers include the web address to the online posting.

The webpage linked to the hyperlink contains an abbreviated newspaper notice that appears to be the same Customer Notice of Rate Adjustment contained in the LGE Certificate at Exhibit A, Attachment 2, with identical language relevant to the new NMS Rider:

LG&E is proposing a new net metering rate schedule, Rider NMS-2, and renaming its existing Rider NMS to be Rider NMS-1. Rider NMS-1 will serve eligible electric generating facilities as defined in KRS 278.465(2) for which customers have submitted an application for net metering service before the effective date of rates established in this proceeding. Rider NMS-2 will apply to all other net metering customers. LG&E is also proposing new terms and conditions for Net Metering Service Interconnection Guidelines.

(Emphasis added).

The LGE Certificate also certified that "LG&E's Application filed with the Commission on the 25th day of November 2020, includes the customer notice as a separate document labeled 'Customer Notice of Rate Adjustment.'" That Notice also appears to be the same Customer Notice of Rate Adjustment contained in the Certificate read the same, in relevant part:

LG&E is proposing a new net metering rate schedule, Rider NMS-2, and renaming its existing Rider NMS to be Rider NMS-1. Rider NMS-1 will serve eligible electric generating facilities as defined in KRS 278.465(2) for which customers have submitted an application for net metering service before the effective date of rates established in this proceeding. Rider NMS-2 will apply to all other net metering customers. LG&E is also proposing new terms and conditions for Net Metering Service Interconnection Guidelines.

(Emphasis added).

Thus, in three separate documents referenced in the Certificate, required to be published as part of the application, it was represented that "Rider NMS-1 will serve eligible electric

generating facilities as defined in KRS 278.465(2) for which customers have submitted an application for net metering service before the effective date of rates established in this proceeding.”

The public is entitled to take the representations of a utility at face value, and in this instance, what has been widely circulated and represented is fundamentally inconsistent with what was represented at hearing as being the effective date for locking in legacy status. LG&E and KU should be bound by this Commission to honor the representations made in the sworn Direct Testimony of witness Conroy and in numerous public notices published and mailed to customers and to the public, in order to avoid harm to those who have relied upon those representations in determining when and whether to seek service under the current NMS 1 tariff.

C. Joint Intervenors Defer To KYSEIA Concerning The Proposed Changes To the Cogeneration Tariff

The May 3, 2021, Commission Order also invited the parties to include in the memorandum brief due on or before May 24, 2021, “each party’s position as to the cogeneration tariff and net metering issues even though those issues will remain the subject of additional proceedings.”

Joint Intervenors will defer to, and endorse the position outlined by the Kentucky Solar Industries Association (KYSEIA) regarding the cogeneration tariff. Joint Intervenors reserve the right to respond to the positions of the utilities and other intervenors in the rebuttal brief.

CONCLUSION

For the reasons stated above, and based on the testimony filed by Joint Intervenors in these cases, Joint Intervenors respectfully request that this Commission:

1. Approve the *Stipulation and Recommendation* filed in Cases No. 2020-00349 and 2020-00350 as being fair, just, and reasonable;

2. Reject the proposed NMS 2 Rider as being unfair, unjust, and unreasonable in defaulting to the SQF tariffed avoided cost rather than providing an empirical and analytically sound basis for determining the benefits (i.e. avoided costs) associated with the introduction of renewable electricity into the grid through net metering;

3. Determine and declare that any LG&E and KU customer who has filed an application to take service under the NMS Rider 1 prior to the effective date of the final Commission Order in these cases establishing a different compensatory rate for fed-back solar electricity, shall be accorded legacy status under NMS-1 for the 25-year period established by statute;

4. Reject the LGE/KU proposed changes in or additions to the interconnection guidelines related to net metering as being inconsistent with KRS 278.467(2) and (3), which require each utility's interconnection guidelines to conform to the guidelines developed by the Commission;

5. Adopt a procedural schedule allowing for two additional sets of data requests, for filing of supplemental witness testimony addressing the proposed NMS 2 Rider in light of the principles adopted in the May 14, 2021 *KPC NMS Order*, and as deemed necessary by the Commission, a hearing regarding such information and testimony; and

6. For any and all other relief to which Joint Intervenors may appear entitled.

Respectfully submitted,



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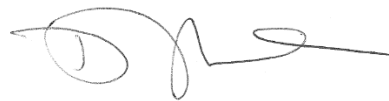
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Kentuckians for the Commonwealth, and
Kentucky Solar Energy Society in Case No.
2020-00350

Certificate of Service

This is to certify that the electronic version of the foregoing *Post-Hearing Brief of Joint Intervenors* is a true and accurate copy of the same document that will be filed in paper medium; that the electronic filing has been transmitted to the Commission on May 24, 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 March 16, 2020 Commission Order in Case No. 2020-00085 an original and ten copies in paper medium of this filing will not be mailed until after the lifting of the current state of emergency.



Tom FitzGerald