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**

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

Tom FitzGerald
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
(502) 875-2428
FitzKRC@aol.com

Counsel for Joint Intervenors Mountain Association, Kentuckians For The Commonwealth, and Kentucky Solar Energy Society In Case No. 2020-00349, and KFTC, KYSES and Metropolitan Housing Coalition in Case No. 2020-00350

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Come the Joint Intervenors, Mountain Association, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Metropolitan Housing Coalition ("Joint Intervenors") and in response to the *Joint Petition Of Kentucky Utilities Company And Louisville gas And Electric Company For Reconsideration Of The September 24, 2021 Order* ("LGE/KU Petition") filed by Louisville Gas & Electric Company and Kentucky Utilities Company ("the Companies") in these cases, provide the following response in opposition to the LGE/KU Petition seeking "reconsideration" of the September 24, 2021 *Order*. For the reasons stated below, and in the basis of the briefs previously submitted by Joint Petitioners, the Petition seeking "reconsideration" should be denied in its entirety as being without merit and for failure to satisfy the standard for a grant of rehearing.

I. There Is No Opportunity Under Law To Request A "Reconsideration" Of A Commission Order.

The LGE/KU Petition is captioned as a Joint Petition "For Reconsideration." To the extent that LGE and KU seek anything other than a rehearing on the issues raised in the pleading, the Joint Petition should be rejected summarily as lacking in statutory basis.

As noted in the LGE/KU Petition, the Commission is a "creature of statute" and has only those powers as have been granted to it by the General Assembly. *Boone County Water v. Public Service Com'n*, 949 S.W.2d 588, 591 (Ky. 1997); *South Central Bell v. Utility Reg. Com'n*, 637 S.W.2d 649, 653 (Ky. 1982). There is <u>one</u> procedure, and one alone, that has been provided by the General Assembly for requesting that the Commission reconsider its Orders. There is no statutory basis for a party to request that the Commission "reconsider" an order other than by petition for rehearing under KRS 278.400.[1]

II. The LGE/KU Petition Is Untimely And Must Be Dismissed

KRS 278.400 defines and bounds the opportunity to seek reevaluation by the Commission of orders, providing unambiguously that:

> After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

KRS 278.400.

The Order for which the Companies seek a rehearing was issued September 24, 2021. The statute limits the opportunity of a "party to the proceedings" to "apply for a hearing with respect to any of the matters determined" to "twenty (20) days after the service of the order[.]"

The September 24, 2021 Order was served electronically by the Commission on September 24, 2021, the day it was rendered, and the twenty-day period expired on October 14, 2021. The LGE/KU Petition was not filed until October 15, 2021, the twenty-first day after service of the Order by electronic means.

[1] While not implicated in this instance, Joint Intervenors believe that the Commission possesses an inherent power to revisit and correct errors in its Orders *sua sponte.* Here, the issue is when a *party* may request the Commission to revisit a matte decided by Order.

Where a Commission Order is served upon the parties by mail, "service" is defined as being "complete three (3) days after the date the order is mailed." *Id.* Here, service was not effected by mail, but instead was effected through the Electronic Filing System.

On October 23, 2020, in Case Nos. 2020-00349 and 2020-00350, a letter was entered into the case files noting that "[t]his letter is to acknowledge receipt of notice [by the Companies] of election to use electronic filing procedures to file an application in the above case." The regulations implementing the electronic filing procedures are found in 807 KAR 5:001 Section 8, which provides unambiguously that

> (1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

807 KAR 5:001 Section 8(1).

The Companies elected to use the electronic filing procedures, so that the process is governed by 807 KAR 5:001 Section 8.

Pursuant to those procedures, the Commission does not serve Orders through the U.S. Mail <u>except</u> in those instances where a party has requested to be excused from electronic service and the Commission has approved the request:

> (11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

807 KAR 5:001 Section 11.

The Companies did not request to opt out of such electronic service, and the Commission has not excused them from electronic service, so that the three-day provision in KRS 278.440, which was obviously written to account for the temporal delay in effecting delivery through the

U.S. mail, is inapplicable. The LGE/KU Petition was filed 21 days after the Commission Order of September 24, 2021 and was untimely filed and cannot be entertained by the Commission.

III. Rehearing Should Be Denied As To All Issues Raised By The Companies

The LGE/KU Petition largely seeks to reargue issues that have been fully vetted in the parties' post-hearing and supplemental post-hearing briefs, and which have been decided by the Commission. Any claims of alleged legal error by the Commission should be addressed to a reviewing court, since rehearing is not intended to be a process for relitigating issues that have been fully addressed by the Commission, such as the components of "reasonable cost," the inapplicability of the narrow concept of "avoided cost" under PURPA to the relationship of retail customer-generators and the utility under a net-metering tariff, and others sought to be rehashed in the LGE/KU Petition. The LGE/KU Petition fails to present new evidence that was not readily discoverable at the time of the original and the supplemental hearings and seeks nothing more than to rehash already presented and uniformly discredited arguments regarding the appropriate compensatory credit.

As the Commission noted in the May 14, 2021 Order in Case No. 2020-00174 denying the request of Kentucky Power Company for rehearing on that Order:

> KRS 278.400, which establishes the standard of review for motions for rehearing, provides that, upon rehearing, a party may offer additional evidence that could not with reasonable diligence have been offered at the time of the original hearing. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order. KRS 278.400 is intended to provide closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings, or to correct any material errors or omissions, or findings that are unreasonable or unlawful.

Order, May 14, 2021, Case No. 2020-00174. See also: Order, *In the Matter of: Application Of Kentucky-American Water Company For A Certificate Of Public Convenience And Necessity Authorizing Construction Of The Northern Division Connection*, Case No. 2012-00096 at 4 (Ky. P.S.C. January 23, 2014.

Joint Intervenors will respond briefly to several of the issues in the LGE/KU Petition, and for those specific claims of error not addressed *infra,* incorporate herein as if fully set forth below, the well-reasoned arguments presented by Intervenor Kentucky Solar Industries Association ("KYSEIA") in opposition to the LGE/KU Petition.

A. The Commission Committed No Error in Providing Legacy Protections For Customers Taking Service Under the NMS 2 Tariff

The Companies complain that the Commission acted unlawfully in providing customers taking service under the replacement NMS 2 Tariff with a 25-year protection as to the rate structure and netting period. According to the LGE/KU Petition, the Commission's action violates KRS 278. 466(5) and (6).

The portion of the September 24, 2021 Commission *Order* complained of states in full that:

> NMS 2 Legacy Customers
>
> In light of the provision established by the legislature for existing net metering customers in KRS 278.466(6), the Commission is persuaded by KYSEIA's witness' arguments that eligible customer-generators who take service under NMS 2 should have legacy protections in place. For the reasons set forth below, the Commission finds that eligible customer-generators who take service under NMS 2 should be allowed to take service under the current two-part rate structure and netting period for 25 years. As noted above, the legislature determined that there should be some allowance for customer expectation of and reliance on existing rate structures when the eligible generating facility was placed in service. This is especially so given the 25-year expected useful life of current eligible generating facilities. Legacy provisions mitigate the negative financial impact that changes in rate design may have on an eligible customer-generator who invested in an eligible generating facility. The 25-year legacy period for NMS 2 customers balances LG&E/KU's need to adapt to changing circumstances, such as increased penetration levels, with the needs of existing eligible customer-generators who made a long-term investment in eligible generating facilities.

September 24, 2021 *Order* at pp. 59-60.

When it suits its purposes, the LGE/KU Petition discusses "due process" – a concept embodying fair notice and a reasonable opportunity to be heard. Yet in this instance, with full and fair notice from the May 14, 2021 *Order* in the Kentucky Power Company case, 2020-00174, and in the testimony of KYSEIAs' witnesses in this case concerning NMS 2 customer legacy rights, the Companies chose not to address the issue in their *Joint Post Hearing Brief* but rather to wait until *rehearing* to present legal arguments concerning the alleged inconsistency of the NMS 2 Legacy protections with the governing statutes. The Companies should not be heard to belatedly complain *after* the Commission's Order on matters on which they had full notice and a timely opportunity to be heard yet chose for whatever reason not to do so.

To the extent that the Commission does entertain the belated LGE/KU challenge to the concept of legacy protections for NMS 2 customers, the LGE/KU Petition misreads the applicable statutes, which do not address nor constrain the Commission in providing, as part of the overarching obligation to assure that approved rates are "fair, just, and reasonable," that the sunken capital investments of NMS 2 customers be given some degree of protection against future changes in rate structure or netting periods that might materially and adversely affect those investment-backed expectations. The Commission properly noted that "[t]he 25-year legacy period for NMS 2 customers balances LG&E/KU's need to adapt to changing circumstances, such as increased penetration levels, with the needs of existing eligible customer-generators who made a long-term investment in eligible generating facilities."

With respect to the alleged inconsistency of the NMS 2 legacy protections with KRS 278.466(5), the Companies are simply wrong. The Commission's grant of legacy status to NMS II customers is fully consistent with the motivation behind the crafting of such legacy status for net metering customers whose systems were in service prior to the "initial net metering order" referred to in KRS 278.466(6). The intention of the crafting of the legacy provision for NMS 1 customers by the General Assembly was to assure that the customer-generator who had made a capital investment in a system with an anticipated 25-year lifespan, would have that customer expectation of and reliance on existing rate structures when the eligible generating facility was placed in service respected. KRS 278.466(6) neither addresses nor proscribes the manner in which legacy protections could or should be afforded to NMS 2 customers. The statute provides backward-looking protection for customers taking service prior to the initial net metering order under KRS 278.466(6) and is completely silent concerning the granting of such forward-looking rights for customers taking service *after* the date of the initial net metering order. Rather, the Commission is granted broad authority by the statute to determine the terms and conditions under which net metering will occur after that date. KRS 278.466 creates the baseline parameters under which net-metering occurs in the Commonwealth. The retail electric supplier is required to make the service available up to a limit, KRS 278.466(1); is required to provide a standard meter capable of reading flow in two directions; KRS 278.466(2); is required to compensate the customer-generator for all electricity fed back into the grid; KRS 278.466(3); and is required to account for the bill credits and usage; KRS 278.466(4). The legacy rights of customer-generators in service prior to the initial net metering order are statutorily protected from intrusion by the utility by KRS 278.466(6). Beyond these parameters, the utility is enabled "using the ratemaking process provided by this chapter," to propose rates and rate structures for customer-generators "without regard for the rate structure of customers who are not eligible customer-generators." KRS 278.466(5). Additionally, the compensatory rate for customers taking service after the initial net metering order is to be "set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier or generation and transmission cooperative on behalf of one (1) or more retail electric suppliers." KRS 278.466(3).

The intent of the General Assembly in conferring the responsibility to set the rates for compensation and determining whether the rates and rate structures proposed by the utility are fair, just, and reasonable, was clearly that the Commission utilize its plenary authority under KRS Chapter 278 in reviewing and determining the relationship between the customer-generator, the utility, and non-participating customers. The General Assembly charged the Commission with using the Chapter 278 rate making processes and determining the term for tariff application is squarely within the authority and obligation of the commission in ensuring that rates are just and reasonable. Since solar facilities are long-lived facilities requiring major investments, adjusting the term length of tariffs in order to accord proper respect to the investment-backed expectations of customers, as with utilities, is entirely proper.

The Commission's Order is well within its statutory authority. The statute is silent regarding whether legacy rights can be conferred on customers taking service after the initial net metering order. The Commission was empowered by SB 100 to determine the reasonableness of rates and rate structures with respect to NMS 2 customers after that time. The Commission cannot be charged with error in implementing the provisions of Chapter 278 for 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 Companies. *Public Service Commission of Kentucky v. Commonwealth,* 320 S.W.3d 660, 668 (Ky. 2010). Rather, this case is governed by the principles established in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). The Supreme Court of Kentucky has endorsed the *Chevron* doctrine, which outlines a two-step analysis of judicial deference to agency determinations of law. First, if the statutory language is clear, then the courts offer no deference to agency action outside the statute's clear language. *Chevron*, 467 U.S. at 842-43. However, if the statutory language is ambiguous, then the court will defer to an agency's reasonable interpretation of the agency's enabling statute. *Id.* at 843. Where the General Assembly does not use language that addresses the specific question at issue, the standard of review for an agency's interpretation of unclear, ambiguous language in a statute is whether the agency used "a permissible construction of the statute" to reach its adjudicative decision. *Metzinger*, 299 S.W.3d at 546 (quoting *Chevron*, 467 U.S. at 843). Under the *Chevron* test, acknowledged by the Supreme Court of Kentucky to be appropriate in reviewing agency action that implements a statute that does not speak to the precise implementation question at hand, the Commission's construction of the statute that is silent concerning legacy rights for those taking service under tariffs proposed after January 1, 2020, is entitled to deference, since it is a "permissible" construction of a statute intended to protect reasonable investment-backed expectations.[2]

Finally, the Commission decision to provide legacy rights similar to those in KRS 278.466(6) for NMS II customers is fully consonant with the regulatory principles of gradualism and stability in rates and terms of service.

B. The Commission Committed No Error In Rejecting The Companies' Methodology For The NMS 2 Netting Period

The Companies complain that the "netting approach the QF-NMS Order prescribes for NMS-2 is unlawful because it violates the plain terms of KRS 278.465 and 278.466." The

[2] The argument that providing legacy protections for rate structure and netting periods somehow violates KRS 278.466(5) is entirely misplaced, since the Commission made clear in footnote 181 to the September 24, 2021 *Order* that the legacy protections for NMS 2 customers was for rate structure only and did <u>not</u> extend to preventing changes in charges. "This legacy status is for the rate *structure* only. The Commission is not making any determination as to the appropriate rate amount, such as continuing to charge NMS 2 customers the same customer charge and kWh charges as non–participating customers." Nothing in the legacy protections precludes recovery of actual costs of serving NMS 2 customers.

arguments are a rehashing of prior arguments of the Companies that seek to end the concept of "net" metering by instantaneously devaluing all fed-in energy rather than netting use over the netting period as contemplated by the statute.

While the General Assembly altered the manner in which the crediting was to be expressed for solar energy fed-in to the grid over that consumed over the course of the netting period, the General Assembly neither changed the *period* over which the use and generation were to be netted, nor the fact that there was to *be* a netting of such use and consumption prior to consideration of what credit (or deficit) existed <u>over the netting period.</u>

The Companies' proposal would have replaced the netting of electricity generated and consumed over a billing period, with a two-channel approach that no longer "nets" production and consumption (however measured) but instead would assign an instantaneous lower credit value to *all* fed-back electricity, and is inconsistent with the underlying statute.[3] The Commission committed no error in rejecting the approach proposed by the Companies as fundamentally inconsistent with the governing statutes and the concept of "net metering."

Prior to the enactment of Senate Bill 100 (SB 100) by the General Assembly during the 2019 Regular Session, "net metering" was defined KRS 278.465(4) in this manner:

> (4) "Net metering" means the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.

The electricity generated and fed through the meter to the grid by the eligible customer-generator, measured volumetrically and tallied in kWh, was offset by the consumption of

[3] The perverse effect of the two-channel billing approach sought by the Companies is that those customer-generators who aren't home during the day, and are therefore exporting all their power onto the grid and who are helping to offset the loads of their neighbors and providing that benefit to the grid, would be penalized the most.

electricity through the meter from the grid "over a billing period" and only the excess over consumption was credited, and any deficit was billed after the netting. After such "netting" of consumption and generation over the billing period, the customer would receive a bill for the difference between electricity generated and electricity consumed *during* that billing period, or a credit that would carry forward and apply to offset future consumption.

The revised definition of "net metering" in KRS 278.465(4) changed the manner in which the credit of generation over use would be expressed (from a kWh to a dollar-denominated credit) but did not change the essence of net metering, which is the netting of *volume* of electricity generation and consumption over the course of the billing period.

Had the General Assembly intended to eliminate the concept of "netting" generation and consumption over the billing period, it would have so provided, eliminating "over a billing period" and instead amending the law to read that the "dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid and priced as prescribed in Section 2 of this Act." It did not do so, and the Companies cannot selectively ignore the phrase to convert billing-period netting into an instantaneous valuation of all fed-in electricity.

The continued use of the phrase "over a billing period" by the General Assembly in SB 100 demands that the usage and generation first be netted to determine how much, if any, electricity was "generated by an eligible customer-generator" that was "fed back to the electric grid over a billing period." If consumption exceeded generation during that billing cycle, then there is no electricity generated and fed back over that period, but instead, a net consumption that under SB 100 would be billed at the retail electric rate. Application of the new dollar-denominated credit to represent the volumetric generation over consumption in the place of a kilowatt-denominated credit does not change the "netting" but rather may affect the valuation of the excess generation that is credited.

The General Assembly has not defined the phrase "fed back to the electric grid," nor the meaning of "consumed by the eligible customer generator." It is perfectly reasonable for the Commission to read the law, consistently with the prior approach of netting consumption and generation, to mean that only that generation not offset by consumption over the billing period is defined as "fed back" and is assigned the export value, and that only consumption that is not offset by production during the billing period is consumption for billing purposes. The LGE/KU Petition views the statute as authorizing and requiring electron tracking, but the statute is about *a bill crediting mechanism—not electrical flow*. It monetizes credits and charges, and, in rate making terms, not just in the billing rate, but also the billing determinates. By requiring consideration of the netted volumes of electricity <u>over</u> the billing period, it provides that all of the net of generation over consumption at the end of that billing period be credited as determined by the Commission's assigned value, and that any consumption in excess of that generation be billed in accordance with the approved tariff for that customer class.

The Commission acted in a manner consistent with statute and with the prior (and now final) decision in the May 14, 2021 *Order* in Case No. 2020-00174 in applying "net metering" as it was and remains defined in KRS 278.465(4) – as the crediting (now "dollar-denominated") of that generation over a billing period *in excess of consumption* during that same billing period.

C. The LGE/KU Petition Offers Nothing Other Than Recycled Content Regarding The Valuation Of Fed-In Solar From Net Metering Customer-Generators And The Rejected Argument That NMS Customers Should Be Conflated With QFs Under PURPA

Ignoring the Commission admonition that a rehearing request is not an appropriate vehicle for seeking to relitigate issues that have been determined, the Companies recycle and repackage the same arguments previously presented to and rejected by the Commission. In that vein, Joint Intervenors summarize and restate their prior opposition to the attempt to conflate entirely dissimilar relationships in order to drive the value of rooftop solar into the ground.

Throughout these proceedings, the Companies have not varied from what has become their mantra and what is their fundamental legal and conceptual error – that the relationship between a net-metering retail ratepayer and the utility is equivalent to, and should be constrained by, the federal and state rules applicable to, the relationship between a wholesale qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the utility with which that QF connects.

Company witnesses acknowledged, grudgingly, that neither PURPA nor the Commission's regulation adopted pursuant to that federal law, 807 KAR 5:054, applies to the relationship between a retail electric customer that is taking service under the net metering tariff of a PSC-regulated electric utility, and that utility. Yet the *gravamen* of the prefiled and hearing testimony of witnesses for the Companies is that the definition of "avoided cost" under regulations adopted pursuant to PURPA, and adopted in 807 KAR 5:054, should constrain the Commission's determination of what terms and conditions in a net metering tariff (including the compensatory credit rate) are "fair, just, and reasonable." The Companies essentially seek to federalize retail net metering in Kentucky and preempt the Commission from fully and fairly considering all the public interest issues raised by and full range of costs avoided by the addition of distributed generation ("DG") to the utility grid. Yet the determination of benefits and full range of costs avoided are properly within the regulatory purview of the individual states as sovereign entities, unencumbered by PURPA or the Federal Power Act. This Commission is charged under Kentucky law to determine what rates are fair, just, and reasonable.

As noted in the rebuttal testimony of witness Rábago, the false equivalence of treating retail net-metering customer generation as if it were just a form of wholesale utility-scale generation, infects all of the analyses and conclusions undergirding the NMS-2 Tariff. *Supplemental Rebuttal Testimony of Karl Rábago,* pp. 4-5.

Exemplary of this conceptual and analytical flaw is the argument advanced by witness Seelye on behalf of the Companies, that excess generation from net metering customers should be completely discounted. 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

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

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. *Rábago, supra,* at 5-6.

There are numerous other areas in which the status of a PURPA QF and a retail net-metering customer are fundamentally dissimilar. A net metering customer will ultimately consume all of the energy they generate, including that which is exported, and any excess that exists when the customer ceases taking service will be extinguished and is without cash value. That is distinctly different than QFs, who can get payment for export and can be a 100-percent export entity, a status that is neither desirable nor permissible for NMS customers.

The conflation of net metering customers with PURPA QF facilities and suggestion that market pricing is appropriate for valuing excess solar generation, suffers from other flaws. Unlike PURPA QFs, net metering retail customers do not "dispatch back" electricity - they feed electricity into the local grid incidental to their generation for use. The "dispatch" characterization is inapt for customer generators who may feed electricity into the local grid during daylight hours while consuming electricity from the grid on off hours and is a term applicable only to generators who sell for resale. The suggestion that market pricing is appropriate for net-metered electricity flows from this same flawed comparison. When electricity is fed into the grid from a net metered customer, other local utility customers use that power and the utility meters that usage and collects a retail rate from the neighboring customer when that electricity passes through a meter. The unreasonably low compensatory "wholesale" credit rate for these exports proposed by the Companies would provide an unjust and unearned windfall to the monopoly utilities while ignoring system benefits generated by that power. The conflation of net metered electricity and power purchases to suggest that the former should be capped in value at the lowest price at which power could be purchased in the market, is similarly flawed. This is not a procurement activity, but rather is a question of just compensation for incidental exports or injections of energy into local grids. Finally, the argument that the compensation rate for exports/injections from net metering facilities should be set at "market" rate displays a fundamental lack of understanding about the principles of market price formation. There is no "market" for net metering exports, nor is there freedom of entry or exit from a market by a net metering customer due to utility requirements and restrictions. There is insufficient volume of systems and exports to support rational price formation using market rates.[6]

Joint Intervenors urge the Commission to reject the LGE/KU Petition on these issues.

D. There Is No Merit To The Argument That The Alleged Failure Of The Commission To Publish Its Workpapers Violates Due Process

The LGE/KU Petition argues that the Companies' due process rights were violated by the Commission's alleged failure to publish the workpapers for the calculations it made in determining the fair and reasonable valuation for excess fed-in solar electricity. The argument is without merit. The text of the September 24, 2021 *Order* plainly discloses for each cost category the methodology used by the Commission and the assumptions it used in making the calculations. Nothing more is needed to determine whether the calculations were properly

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[6] There is no evidence that supports the assertion that retail compensatory credit for exports overcompensates net metering customers. Indeed, since utilities operating under cost-of-service regulation, the retail rate is supposed to reflect the total costs of delivering a kilowatt-hour of energy. If compensatory crediting for injection of net metered electricity at or very near the point of use is excessive, then it must be that the retail rate is excessive as well. There is no evidence that supports the assertion that net metering "requires the utilities to pass excessive costs on to their non-net metering customers." The evidence in the record refutes the assertion that "it has become clear" that net metering promotes unfairness.

conducted, and due process no more requires disclosure of the Commission's deliberative documents than it requires publication by a Court of earlier drafts of a judicial Opinion. The Commission has no obligation to provide workpapers, and the September 24, 2021 *Order* adequately identified the components and methods of valuation for each category of costs avoided.

E. The QF Rates Prescribed In The September 24, 2021 *Order* Are Reasonable

In the LGE/KU Petition, the Companies' state that "the QF rates prescribed in the QF-NMS Order have no rational relationship to the Companies' actual avoided costs *for solar energy and capacity* and are therefore unlawful." LGE/KU Petition, p. 4. (emphasis added). The addition of the phrase "for solar energy and capacity" is an artificial constraint on the definition of "avoided costs" in the PURPA context, since the definition and intent of the "avoided cost methodology" is *not* to provide prices equal to *other similar generating sources*, but to evaluate what the utility would have to pay in the absence of the QF's production. The Commission evaluated this question and did a rational, reasonable benefit-cost analysis, and there is no basis for rehearing on this point.

Conclusion and Prayer for Relief

For the reasons stated herein, and in the prior briefs submitted by Joint Intervenors in this matter and on the basis of the well-reasoned and lawful *Order* of this Commission of September 24, 2021, Joint Intervenors respectfully request that the LGE/KU Petition be rejected in its entirety, and for any and all other relief to which they may appear entitled.

Respectfully submitted,

Tom FitzGerald
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, Kentucky 40602
(502) 551-3675
KBA No. 22370
fitzkrc@aol.com

Counsel for Joint Intervenors
Mountain Association, Kentuckians For The Commonwealth, and Kentucky Solar Energy Society In Case No. 2020-00349 and Metropolitan Housing Coalition, 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 *Response Of Joint Intervenors To The LGE/KU Petition For Reconsideration* 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 October 22, 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, no hard copy of this filing will be transmitted.

Tom FitzGerald