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 SURCREDIT	**)**	**CASE NO. 2020-00349**

In the Matter of:

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

<u>JOINT POST-HEARING REPLY BRIEF OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY</u>

Dated: June 1, 2021

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INTRODUCTION

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, the "Companies") respectfully submit this post-hearing reply brief to the Kentucky Public Service Commission ("Commission") and appreciate the opportunity to respond to a number of the intervenors' briefs in these proceedings.

ARGUMENT

I. There is Unanimous Support for the Stipulation.

In their post-hearing briefs, each of the fifteen parties to the *Stipulation and Recommendation* ("Stipulation") affirmatively support and recommend the Commission approve the Stipulation to resolve all issues except those concerning net metering and the Companies' tariff provisions concerning qualifying facilities ("QFs").[1]

The merits of the Stipulation are reviewed in detail in a number of the post-hearing briefs, including the comprehensive brief jointly filed by the Kentucky Attorney General and the Kentucky Industrial Utility Customers ("AG-KIUC").[2] The AG-KIUC's Brief recommends that "the Commission not undertake a de novo review of each individual aspect of the Stipulation. Instead, the Stipulation should be considered as a comprehensive package. If it produces rates that are within the zone of reasonableness, then it should be approved, even if the Commission might have reached a different conclusion on an individual issue in a litigated case."[3] Two short

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[1] See Joint Post-Hearing Brief of the Kentucky Attorney General and the Kentucky Industrial Utility Customers, Inc., pp. 1-2. (May 24, 2021); Post-Hearing Brief of the United States Department of Defense and All Other Federal Executive Agencies, pp. 1-2 (May 24, 2021); Post-Hearing Brief of The Kroger Co., pp 1-2 (May 24, 2021); Kentucky Solar Industries Association, Inc. Joint Post-Hearing Memorandum Brief, p. 2 (May 24, 2021); Memorandum Brief on behalf of Louisville/Jefferson County Metro Government and Lexington-Fayette Urban County Government, p.1 (May 24, 2021); Post-Hearing Brief of Joint Intervenors, pp 2-3(May 24, 2021); Post-Hearing Brief of Walmart Inc. pp. 1-2 (May 24, 2021); Sierra Club's Post-Hearing Brief, p. 1. (May 24, 2021); Post-Hearing Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, pp. 3-11 (May 24, 2021).

[2] Joint Post-Hearing Brief of the Kentucky Attorney General and the Kentucky Industrial Utility Customers (May 24, 2021).

[3] AG-KIUC Brief, p. 2 (May 24, 2021).

clarifications are worthy of brief review. First, the AG-KIUC's Brief, at pages 2-4, fairly presents the merits of the depreciation expense issue. The essence of the depreciation issue is timing: the total cost of the three generation units can be recovered now through their retirement using the proposed depreciation rates, or a portion of their cost can be recovered through existing depreciation rates and upon retirement the remaining Retirement Costs can be recovered through the rider. The parties agreed to the later in the Stipulation. As the AG-KIUC Brief makes plain, the retired asset recovery rider allows the Companies to "recover Retirement Costs less accumulated deferred income tax on a levelized basis over ten years, including a weighted average cost of capital carrying cost."[4] Under the terms of the Stipulation, and as Mr. Blake explained, the most recently approved base rate return on equity will be used in the weighted average cost of capital.[5] Using this return on equity maintains the symmetry of the cost recovery between the rider and base rates for this generation capital, which, but for the agreement to continue to use the existing depreciation rates, would be fully recovered through base rates when the generation assets are retired using the proposed depreciation rates. The use of the most recently approved base rate return on equity balances the agreed upon delay in the timing of the recovery of this cost.

Second, the Companies also appreciate and agree with the AG-KIUC's statement that "the treatment of AMI in the Stipulation may become a model for the rest of the nation to follow."[6] The Companies would note only a clarification to the AG-KIUC's Brief regarding how the

[4] "Retirement Costs" include "the net book value, materials and supplies that cannot be used economically at other plants owned by the Utilities, and decommissioning or removal costs and salvage credits, net of related accumulated deferred income tax ("ADIT"). Related ADIT shall include the tax benefits from tax losses." Stipulation, Article V, Section 5.3

[5] Stipulation Article V, Section 5.3 (A); *See* Stipulation Testimony of Kent W. Blake at 18 (April 19, 2021).

[6] AG-KIUC Brief at 4.

Stipulation reflects certain recommendations by AG-KIUC witness Alvarez by containing provisions addressing the recommendations identified in the AG-KIUC's Brief.[7]

II. The Commission Should Approve the Companies' Proposed Net Metering Riders (Riders NMS-1 and NMS-2) Because They Are Consistent with Kentucky Statutes and Are Fair, Just, and Reasonable for All Customers.

A. A statute governs Rider NMS-1 legacy rights, which the Commission cannot expand either in terms of eligibility or concerning system capacity.

Contrary to the position asserted by KSIA and the Joint Intervenors,[8] the Commission recognized in its recent order concerning net metering compensation rates for Kentucky Power Company that the limits on statutory legacy rights (i.e., to which facilities Rider NMS-1 may apply) are narrowly prescribed by statute: "Based on the plain language of KRS 278.466(6), the Commission finds that the eligible generating facility must be in service prior to the effective date of the Commission's approval of NMS II in order for the eligible customer-generator to be eligible to take service under NMS I."[9] There is no exception in the statutory text for prospective net metering customers who have submitted applications on or before the date of the Commission's order approving net metering rates under Rider NMS-2.

KSIA and the Joint Intervenors attack the sufficiency of the Companies' notices regarding who may take service under Rider NMS-1.[10] KSIA even goes so far as to suggest that the Companies have not met the requirement of KRS 278.180(1) to give the Commission notice that

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[7] Regarding Green Button and customer data issues, see Stipulation at 12, Art. 5.2(J). Regarding Peak Time Rebates, see Stipulation at 15, Art. 5.6. Regarding reporting or recordkeeping requirements, see Stipulation at 11, Art. 5.2(B).
[8] KSIA Brief at 6-8; JI Brief at 6 and 13-16.
[9] *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, Order (PSC Ky. May 14, 2021). The reasoning of the Commission's order is consistent with the Companies' response to the Commission Staff's Post-Hearing Data Request No. 39, wherein the Companies explain at length why customers who have only applied for net metering service but do not have an eligible electric generating facility prior to the effective date of the proposed net metering tariffs in these proceedings may not take service under Rider NMS-1.
[10] KSIA Brief at 6-8; JI Brief at 6 and 13-16.

"stat[es] plainly the changes proposed to be made and the time when the changed rates will go into effect[.]"[11] But the record demonstrates the notices' sufficiency in both form and effect.

Regarding form, the Companies filed a motion to deviate to allow them to publish abbreviated notices in these proceedings.[12] Attached to the motion was a copy of the form of the proposed notice that included the exact NMS-1-related text that KSIA and the Joint Intervenors now claim was insufficient.[13] The Commission granted the Companies' motion to publish the abbreviated notice; and no party objected to the Companies' motion or to the Commission's Order granting the motion.[14] Notably, the Order did not indicate the form of the notice was in any way insufficient or inadequate.

Regarding effect, the strongest evidence of the adequacy of the Companies' notices is that ***the exact same*** solar-related parties and counsel that intervened and argued against Kentucky Power Company's recent net metering proposals have intervened and argued against the Companies' net metering proposals in these proceedings. Indeed, they are the very parties who, in addition to Commission Staff, have raised questions, testified, and offered briefing about who may take service under Rider NMS-1. In addition, scores of public commenters have offered their opinions on these issues in the record of these proceedings, which would not have been possible if the public had not received adequate notice. All of this demonstrates that the Companies' published notices were "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action," and were therefore fully adequate.[15] Therefore, there is no

[11] KSIA Brief at 6-8.
[12] Case No. 2020-00349, KU Motion to Deviate (KY. PSC Oct. 23, 2020); Case No. 2020-00350, LG&E Motion to Deviate (KY. PSC Oct. 23, 2020).
[13] Case No. 2020-00349, KU Motion to Deviate Exh. A, KU Form of Notice at 2 (KY. PSC Oct. 23, 2020); Case No. 2020-00350, LG&E Motion to Deviate Exh. A, LG&E Form of Notice at 3 (KY. PSC Oct. 23, 2020).
[14] Case No. 2020-00349, Order (KY. PSC Nov. 10, 2020); Case No. 2020-00350, Order (KY. PSC Nov. 10, 2020).
[15] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) ("The fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably

reasonable argument that the Companies' notices were insufficient; indeed, nobody has provided the name of a single potential intervenor absent from these proceedings who would have sought intervention had the Companies' published notices been phrased differently. And because the Companies' notices were clearly sufficient, there is no ground for disallowing recovery of the cost to publish them.[16]

Finally, as the Commission recognized in its recent Kentucky Power order and contrary to KSIA's position, legacy NMS-1 customers cannot expand their existing systems' capacity and retain legacy rights.[17] This restriction is clear under KRS 278.466(6), which states that "the net metering tariff provisions in place when the eligible customer-generator began taking net metering service" apply to NMS-1 customers. That necessarily includes the Companies' current Net Metering Interconnection Guidelines, which the Commission prescribed, and which require a new application for any and all capacity additions.[18] Therefore, KRS 278.466(6) precludes granting KSIA's request that NMS-1 customers be able to expand their existing systems while retaining NMS-1 legacy rights.

B. Retaining current NMS without any change as proposed by Cities is impermissible; KRS 278.466(3) requires issuing a dollar-denominated compensation rate for Rider NMS-2.

The Cities' argument to retain the Companies' existing Rider NMS because, according to the Cities, the existing subsidies created by net metering are relatively small, is entirely contrary to statute and therefore should be rejected.[19] KRS 278.466(3) *requires* the Commission to

calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."), *cited by* Karem v. KPSC, No. 2017-CA-001697-MR (Ky. App. 2019) (not to be published).

[16] *Contra* KSIA Brief at 7.

[17] KSIA Brief at 18-19; Case No. 2020-00174, Order at 44 (Ky. PSC May 14, 2021).

[18] *See* Kentucky Utilities Company P.S.C. No. 19, Original Sheet No. 57.4; Louisville Gas and Electric Company P.S.C. Electric No. 12, Original Sheet No. 57.4; Case No. 2008-00169, Order (Ky. PSC Jan. 8, 2009).

[19] Cities' Brief at 2-3. The Cities are Lexington-Fayette Urban County Government and Louisville Metro.

prescribe a dollar-denominated rate a retail electric supplier will use to compensate net metering customers; it is not a suggestion or an option, and it does not contain an exception for perceived small subsidies to be remedied: "The rate to be used for such compensation *shall* be set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier …."[20] Whatever that rate is, it cannot simply be the current retail rate for each customer class as KSIA contends.[21] There is no evidence in these proceedings to support such an approach; the assertion that customers should compensate a residential net metering customer about $0.10/kWh while compensating a TODS net metering customer about $0.03/kWh, often for energy supplied at the same time and even on the same distribution circuit is arbitrary.[22] The Commission therefore should reject the Cities' contention or KSIA's recommendation, and follow the law by prescribing a new, cost-based, and dollar-denominated Rider NMS-2 rate in these proceedings.

C. Kentucky's Net Metering Statutes require instantaneous netting, not monthly netting, contrary to KSIA's position.

Contrary to Kentucky's Net Metering Statutes, KSIA argues that the Commission require the Companies use monthly energy netting rather than the instantaneous netting the Companies have proposed.[23] KSIA asserts that the Commission should require monthly netting, on a kWh basis, despite statutory requirements because customers cannot vary their usage from moment to moment to track with their energy production and because energy storage is expensive.[24] Neither of these justifications finds any support in, and therefore cannot justify departing from, the clear requirements of Kentucky's Net Metering Statutes.

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[20] KRS 278.466(3) (emphasis added).
[21] *See, e.g.,* Inskeep Testimony at 5.
[22] *See, e.g.,* Stipulation Exh. 5 at 5 (Stipulated KU Rate RS) and 26 (Stipulated KU Rate TODS).
[23] KSIA Brief at 10-11.
[24] *Id.*

The plain text of KRS 278.465(4) and KRS 278.466(3) requires instantaneous netting. KRS 278.465(4) states that the quantities to be netted for net metering are dollar-denominated quantities: one-dollar value for energy consumed from the retail electric supplier and valued at applicable retail rates; the other for energy produced to the retail electric supplier's grid and valued at the rate prescribed by the Commission under KRS 278.466(3). The only way to obtain the two-dollar values to be netted is to measure two separate kWh quantities and value them using two rates. This requires "instantaneous netting"; it would be impossible to achieve otherwise. This finds further support in KRS 278.466(3) (emphasis added):

> A retail electric supplier serving an eligible customer-generator shall compensate that customer for ***all*** electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour metering prescribed in subsection (2) of this section.

There is no ambiguity in the statute. The General Assembly has stated that retail electric suppliers like the Companies "***shall*** compensate that customer for ***all*** electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour metering prescribed in subsection (2) of this section."[25] The Companies' meters used for net metering have always separately registered net power flows to the customer and from the customer. Therefore, the Companies must apply the Rider NMS-2 rate to each and every kWh that flows to the Companies' system in each billing period to comply with KRS 278.466(3), regardless of whether the customer is a net energy producer or consumer for the billing period.

The Commission is a creature of statute and is therefore bound to follow the policy propounded by the General Assembly, not to create its own.

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[25] KRS 278.466(3)(emphases added).

D. KSIA's criticism of the Companies' net metering cost of service studies have no bearing on the Companies' proposed Rider NMS-2 rate.

KSIA mistakenly asserts that because the Companies' net metering cost of service studies are not based on statistically valid data and do not include non-residential net metering customers, the Commission should not approve the Companies' proposed Rider NMS-2 compensation rate.

The Companies have already addressed the statistical validity of the data underlying their net-metering cost-of-service study.[26] That study shows that the Companies' current net metering customers are receiving significant subsidies and that, even under Rider NMS-2, future net metering customers will likely receive subsidies in their role as customers.[27] Therefore, any assertion that the Companies' proposed Rider NMS-2 compensation rates lack cost of service evidence is both unsupported and irrelevant: cost of service evidence is relevant when setting rates for electric service taken from a utility, not for compensation rates paid to producers for energy they provide.[28]

E. The Companies' proposed Rider NMS-2 compensation rate reflects truly avoided costs and comports with applicable ratemaking standards and industry norms.

Other than bare assertion, there is no support for KSIA's claim that the Companies' proposed Rider NMS-2 compensation rate, which is their Rider SQF non-time-differentiated rate, does not reflect the Companies' avoided cost for such energy.[29] The Companies fully supported their SQF rates and responded to the Commission inquiries concerning the underlying data and proposed rates before the Commission approved the SQF rates to take effect on June 30, 2020.[30]

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[26] *See* KU Response to PSC 5-15; LG&E Response to PSC 5-16.
[27] *See, e.g.,* Rebuttal Testimony of William Steven Seelye at 67-72.
[28] *See* Rebuttal Testimony of Robert M. Conroy at 5.
[29] KSIA Brief at 9.
[30] *See* KU Response to PSC 5-14; LG&E Response to PSC 5-15.

KSIA's attack on the Companies' SQF rates is therefore an attack on the adequacy of the Commission's review and approval of the same rates less than a year ago.

KSIA further criticizes the Rider NMS-2 rate as not fully accounting for the value of benefits provided over the lifetime of net metering systems.[31] But there is little or no evidence of these supposed benefits in the record—certainly neither KSIA nor the Joint Intervenors have attempted to quantify any such benefits—and there is no ground at all for compensating net metering customers for claimed future benefits when those customers provide no assurance at all that their facilities will perform or even be available at any level or at any time.[32]

F. The Companies disagree with KSIA's analysis of how the Commission's recent Kentucky Power order should apply in these proceedings.

The Companies disagree with KSIA's approach to applying the net metering rate components described in the Commission's recent Kentucky Power order to the Companies' NMS-2 compensation rate in these proceedings because the Kentucky Power order contains legal flaws the Commission should avoid in these proceedings. Unlike the portion of the Kentucky Power order concerning legacy rights for existing net metering customers, which straightforwardly applied the unambiguous text of KRS 278.466(6), the bulk of the order created an entirely new rate methodology not required by statute and that departed from venerable cost-based ratemaking principles. Moreover, precisely because the Kentucky Power order departed from cost-based ratemaking, there is no limiting principle to it; if it is permissible to have eight rate components not bounded by actually avoided costs—including at least one component that lies outside the Commission's jurisdiction—there is nothing to prevent expanding such categories indefinitely and even arbitrarily. Therefore, although the Companies have cited and support the Kentucky Power

[31] KSIA Brief at 9.
[32] *See, e.g.,* Conroy Rebuttal at 9 and 12-18.

order's correct application of clear statutory texts like KRS 278.466(6), they respectfully disagree with the order's net metering rate methodology and argue against its application in these proceedings.

1. KSIA's proposal that avoided energy cost should be 2017-2019 daytime-only average PJM LMP at LG&E interface levelized for 25-year period is nonsensical to apply to the Companies.

KSIA has proposed that the avoided energy cost component of the Companies' Rider NMS-2 compensation rate should be the 2017-2019 daytime-only average PJM LMP at the LG&E interface levelized for a 25-year period.[33] This odd proposal makes no sense to apply to the Companies; the Companies are not PJM members and do not depend on PJM to supply their customers' energy needs. Moreover, the Companies' actual avoided energy costs are easily discerned and regularly reviewed with the Commission, most notably every two years when the Companies seek approval for revised Rider SQF rates. Those rates are published and publicly available in the Companies' tariffs; basing an avoided energy cost for the Companies on PJM LMPs that have no bearing on the Companies' avoided costs is an arbitrary approach the Commission should reject.

2. There is no evidence to support an ancillary services component.

KSIA advocates for an ancillary services component to be included in Rider NMS-2 compensation.[34] But there is no evidence in the record of these proceedings to support such a component, as well as no evidence to suggest net metering customers actually provide any compensable ancillary services. Therefore, the Commission should reject this proposal, as well.

[33] KSIA Brief at 11.
[34] KSIA Brief at 12.

3. There is no rational basis to support KSIA's avoided generation capacity proposal.

KSIA's proposed avoided generation capacity component is flawed from the outset. Like KSIA's proposed avoided energy cost component, its proposed avoided generation capacity cost component begins with PJM data (PJM Zone 3, UCAP Net CONE for natural gas combined cycle units) that has no bearing on the Companies as non-PJM members.[35] Moreover, there is simply no evidence in these proceedings that net metering facilities, even if increased to the statutory 1% of peak load cap, would result in any avoided generation capacity cost. If it could be shown that any such capacity could be avoided, it would be additional solar capacity, the market rate for which is readily known and available—about $0.03/kWh for all components, not just a capacity component.[36]

In addition, the structure of the Solar PPA, as well as the solar PPAs the Commission recently approved for Big Rivers Electric Corporation and the national market data in the record of these proceedings, shows that solar facilities are not compensated for capacity; they are compensated on a per-kWh energy basis.[37] The market rate for such energy in the context of long-term PPAs—to which KSIA desires to compare net metering—is about $0.03/kWh or less before taking into account offsetting REC revenues, which the Companies have shown would tend to reduce the Solar PPA rate to about the Companies' proposed Rider NMS-2 rate.[38]

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[35] KSIA Brief at 12-13.

[36] The Companies' 100 MW solar power purchase agreement with ibV ("Solar PPA") includes 20-year levelized energy-only pricing of $0.02782/kWh with availability guarantees backed by liquidated damages, and it provides the Companies all of the renewable energy certificates ("RECs") associated with the energy produced. *See* Conroy Rebuttal Exh. 1. *See also* Companies' Response to PSC 6-32.

[37] *See id.*; *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, Case No. 2020-00183, Big Rivers' Filing in Response to Commission Order on Confidential Treatment Application Exhs. 1-3 (PSC Ky. Apr. 23, 2021).

[38] *See, e.g.,* Conroy Rebuttal at 15-16.

Finally, compensating net metering customers for avoided generation capacity would appear to be at odds with the Commission's orders in the Solar PPA proceeding. In that case, the Commission rejected the Companies' proposal that large customers purchasing most of the output of the Solar PPA facility would receive any generation-related demand charge offset, calling any such credit a "subsidy." The same reasoning should apply in these proceedings where, unlike the Companies' Solar PPA provider, net metering customers provide no assurance that their facilities will perform or even be available at any level or for any period of time. An avoided generation capacity component of Rider NMS-2 compensation should be rejected.

4. There is no rational basis to support KSIA's avoided transmission capacity proposal.

KSIA next argues for an avoided transmission cost component based on embedded transmission costs and allocated using the LOLP allocation methodology, adding losses through a gross up, and using a rate escalation and discounting methodology to account for the Companies' transmission cost escalation.[39] The Commission should reject this flawed approach for several reasons. First, the only evidence in these proceedings is that net metering would create no transmission capacity savings at all, even if aggregate net metering capacity increased to 1% of the Companies' peak load.[40] Second, neither KSIA nor the Joint Intervenors have identified a single transmission cost that net metering could or would avoid. Third and finally, using embedded costs to create an avoided transmission capacity component is not rational; the Companies cannot avoid costs already incurred. This makes it particularly telling that KSIA and the Joint Intervenors have not identified any future transmission cost that could be avoided. Lacking any evidence at

[39] KSIA Brief at 13-14.
[40] Companies' Response to PSC 4 Strategen No. 4.

all for such an avoided cost, the Commission should refuse to include one in the Rider NMS-2 compensation rate.

5. There is no rational basis to support KSIA's avoided distribution capacity proposal.

KSIA argues that an avoided distribution cost component for Rider NMS-2 should use the same basic approach as its proposed approach to avoided transmission cost, except that "effective solar capacity factor should be calculated based upon the solar production in relation to the top 10 percent of hourly class loads for each utility."[41] As with KSIA's argument for avoided transmission cost, the Commission should reject this flawed approach for several reasons. First, there is no evidence in these proceedings that net metering would create any distribution capacity savings at all; rather, there is evidence that net metering affects a minority of the Companies' substation transformers, and it affects only a tiny minority of them by more than 1% of their capacities.[42] While the Joint Intervenors note that there is no evidence that net metering has created or will create any additional costs for the Companies, here there is clear evidence that net metering has so little impact on the Companies' distribution systems that it cannot credibly be claimed that they will create any distribution capacity cost savings, either. Second, neither KSIA nor the Joint Intervenors have identified a single distribution cost that net metering could or would avoid. Third and finally, using embedded costs to create an avoided distribution capacity component is arbitrary; the Companies cannot avoid costs already incurred. As with transmission, this makes it particularly telling that KSIA and the Joint Intervenors have not identified any future distribution cost that could be avoided. Lacking any evidence at all for such an avoided cost, the Commission should refuse to include one in the Rider NMS-2 compensation rate.

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[41] KSIA Brief at 14-15.
[42] KU Response to PSC 6-9; LG&E Response to PSC 6-9.

6. The Commission should reject KSIA's approach to avoided carbon costs.

KSIA proposes that the Rider NMS-2 compensation rate should include an avoided carbon cost component that uses carbon-cost forecasts that have costs ranging from "$51.00 per ton in 2020 to $85.00 per ton in 2050."[43] This approach is factually and methodologically flawed, and the Commission should reject it.

There is no rational basis to include such a component at all. Certainly, the Companies include carbon cost *scenarios* in their integrated resource plans. But those scenarios are purely hypothetical and help evaluate different generation portfolios across a variety of possible futures; they do not mean there will be carbon costs of any given amount at any given time, and they do not justify compensating net metering customers today for merely hypothetical costs in the indefinite, unknowable future. There was no carbon cost applicable to the Companies' operations in 2020—certainly not the $51.00/ton in 2020 that KSIA's allegedly superior forecast used—and one has not been applied to the Companies to date in 2021. Moreover, if a carbon tax or other carbon cost became applicable to the Companies' production in the future, the Companies would include it as an avoided cost component of Rider SQF, which would automatically flow through to the Rider NMS-2 compensation rate (which is the non-time-differentiated SQF rate).

Even if accounting for such merely possible costs was not arbitrary, again the Solar PPA shows that such costs (energy, generation capacity, environmental compliance, and carbon cost, if not also ancillary services) can be avoided for $0.02782/kWh for 20 years, and there is ample market data to support the availability of significantly more solar generation at about the same price.

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[43] KSIA Brief at 15-16.

7. The Companies' SQF rate, which is the Rider NMS-2 compensation rate, already includes avoided environmental compliance cost (consumables), and there is no evidence to support any other avoided environmental compliance cost as argued by KSIA.

KSIA asserts that Rider NMS-2 compensation should include an avoided environmental compliance cost component, but KSIA does not cite a single environmental cost that net metering would actually help the Companies avoid.[44] Moreover, the Companies' avoided production cost that underlies their proposed Rider NMS-2 rate already includes avoided environmental consumables costs.[45] Here again, KSIA's proposal to use embedded or unavoidable environmental compliance costs to create an avoided environmental compliance cost component is arbitrary; the Companies cannot avoid costs already incurred, and there is no evidence of any future environmental compliance costs the Companies could avoid due to net metering. Therefore, the Commission should refuse to include an avoided environmental compliance cost component in the Rider NMS-2 compensation rate.

8. Adding a job benefits and economic development net metering export component is outside the Commission's jurisdiction.

KSIA supports adding a component to Rider NMS-2 in the Companies' next base rate cases for which there is no evidence and that is by definition outside the Commission's jurisdiction. The Commission should therefore reject it. First, the Commission should not pre-judge an issue in a future rate proceeding as KSIA is inviting the Commission to do.[46] Second, there is no evidence to support KSIA's and the Joint Intervenors' claims that net metering creates *net* jobs; their claims ignore the possibly of job-eliminating effects of net metering, including the potential for jobs to be lost across the fossil-fuel-fired generation supply chain, as well as the detrimental effects of

[44] KSIA Brief at 16.
[45] *See* Companies' Response to AG-KIUC 1-172 Attachment 1 at 2.
[46] KSIA Brief at 16-17.

employing people to do things that are inherently economically inefficient.[47] Third, unlike the Companies' Economic Development Riders, which are designed to ensure all participants at least cover their incremental costs and make a contribution to fixed cost recovery while also retaining or expanding load—and that they do so only when there is adequate capacity, which should be a relative rate benefit to all customers—net metering by definition reduces load, making system usage less efficient. Moreover, the Companies do not provide EDRs because they create jobs; rather, job creation is a byproduct of economic development that increases load and improves rates (at least relatively). That is why EDRs are within the Commission's jurisdiction to approve; they have a direct connection to utility rates and service. In contrast, KSIA provides no rate-based rationale for adding a "jobs and economic development benefit" component to Rider NMS-2 because there is no such benefit. Compensating net metering customers for jobs and economic development that have no impact on rates is by definition outside the Commission's jurisdiction.[48] The Commission should therefore refuse to require the addition of such a component now and in the future.

G. The Joint Intervenors' assertion that the Companies' proposed NMS-2 rates are "confiscatory and punitive" is irrational because NMS-2 will apply only to future net metering customers, not current net metering customers.

Contrary to the Joint Intervenors' assertions, by definition there is nothing "confiscatory and punitive" about the proposed Rider NMS-2 rate because none of the Companies' current net metering customers will be affected by Rider NMS-2; those customers' facilities will keep their

[47] *See* Companies' Response to PSC 6-32.

[48] *See, e.g.*, KRS 278.040(2); *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Certain Existing Demand-Side Management and Energy Efficiency Programs*, Case No. 2017-00441, Order at 28 (Ky. PSC Oct. 5, 2018). *See also The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Order at 4 (Ky. PSC July 8, 2011) ("[I]ssues of environmental externalities, such as air and water pollution from generating electricity and mining fuel to supply the generating plants, are all issues beyond the scope of the Commission's jurisdiction.").

current net metering arrangement under Rider NMS-1 for 25 years. Only future net metering customers will be affected by Rider NMS-2, meaning that they will get to decide whether they believe that compensation rate—and the full retail rate offset they receive for every kWh they produce and consume onsite—is sufficient to support whatever level of investment they are contemplating.[49] Those customers will be making entirely free and voluntary *future* decisions based on whatever NMS-2 rate and regime the Commission approves. By definition, therefore, whatever rate the Commission approves will be neither confiscatory nor punitive.

H. The NMS-2 legacy rights KSIA advocates are contrary to KRS 278.466(5).

KSIA asserts that "eligible customer-generators who take service under the Companies' NMS-2 should be allowed to take service under the existing two-part rate structure and netting for a period of 25 years."[50] Why the netting component of this proposed legacy right is contrary to KRS 278.465(4) and 278.466(3) is addressed earlier in this reply brief. With regard to Rider NMS-2 customers being able to continue to "take service under the existing two-part rate structure … for a period of 25 years," such asserted legacy rights violate KRS 278.466(5) and would be impracticable to implement. KRS 278.466(5) gives retail electric suppliers a clear right to establish different rate structures for net metering customers to ensure full cost recovery, "including but not limited to fixed and demand-based costs." To create out of whole cloth a 25-year legacy right that would preclude a utility from exercising its right to implement rates for net metering customers under KRS 278.466(5), which would likely include implementing demand charges for such customers, would violate the statute. The asserted legacy right would actually be

[49] The Rider SQF compensation rate the Companies have proposed for Rider NMS-2 is the same compensation rate the Commission has approved for the Companies' Solar Share Program, which has over 2,700 customers as subscribers and 2 MW of capacity constructed. See KU Response to Mountain Association, Kentuckians for the Commonwealth, and Kentucky Solar Energy Society's First Set of Data Requests for Information, No. 58; LG&E Response to Metropolitan Housing Coalition, Kentuckians for the Commonwealth, and Kentucky Solar Energy Society's First Set of Data Requests, No. 61.

[50] KSIA Brief at 18.

superior to the legacy rights provided for existing net metering customers under KRS 278.466(6); such customers would have no right to object if three- or four-part rates were implemented for all customers. But under the NMS-2 legacy rights KSIA proposes, NMS-2 customers would be able to retain their two-part rates for 25 years from the date they began taking net metering service. This argument directly conflicts with the current statutory design. The Commission should therefore refuse to implement such legacy rights—which find no support in statute—for the Companies' NMS-2 customers.

III. The Commission Should Reject KSIA's QF Proposals and Instead Approve the Companies' Current QF Rates and Tariff Provisions with the Modifications the Companies Proposed in These Proceedings.

KSIA has proposed several changes to the Companies' current SQF and LQF tariff provisions. The Commission should reject KSIA's proposed changes as both unnecessary and potentially harmful to customers. As the Companies noted in their post-hearing brief, changes to the Companies' SQF and LQF rates and tariff provisions are potentially far more impactful for all customers because there is no statutory cap on the amount of purchase obligation that could result—and the amount could be quite significant when considering that QFs may have electric capacity of up to 80 MW each.[51] When considering possible changes to these rates and tariff provisions, it is worth noting that whatever compensation rates established in this proceeding, particularly for Rate LQF, could become the new minimum pricing in any future requests for proposals ("RFP") the Companies issue for new renewable generation.

[51] *See* 807 KAR 5:054 Section 1(8) and (10).

A. The Commission should retain the Companies' recently approved SQF rates.

As noted earlier in this brief, the Commission reviewed and approved the Companies' current SQF rates to be effective June 30, 2020. Therefore, there is no reason to believe rates so recently reviewed and approved are now invalid or lacking in support.[52]

First, the Commission should reject any SQF approach that would require a capacity payment for all SQFs. Under the Commission's QF regulations, capacity payments are applicable only to QFs that provide energy and capacity under legally enforceable obligations.[53] KSIA argues a minimum contract term of 10 years should be the standard for the legally enforceable obligation.[54] The Companies do not necessarily oppose that contract term, and if an SQF is to receive any kind of capacity compensation, a 10-year minimum term is reasonable, particularly because the Companies do not project any capacity need before 2028.[55] But any such legally enforceable obligation should provide capacity payments that are comparable to the way capacity is typically compensated in the industry. As noted in this brief and shown in the Companies' evidence, long-term contracts for solar energy in the form of PPAs do not contain separate capacity payments; rather, they are offered on an energy-payment-only basis, and the current PPA market pricing for long-term solar energy at utility scale is about \$0.03/kWh.[56] In addition, the Companies believe industry-standard terms like availability guarantees backed by liquidated damages are appropriate if SQFs are to be compensated at industry-standard levels.

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[52] *See* KSIA Brief at 21.
[53] 807 KAR 5:054 Sec. 7(2).
[54] KSIA Brief at 21-22.
[55] *See, e.g.*, 4/27/21 Hearing, VR 13:16:45.
[56] The Companies' 100 MW solar power purchase agreement with ibV ("Solar PPA") includes 20-year levelized energy-only pricing of \$0.02782/kWh with availability guarantees backed by liquidated damages, and it provides the Companies all of the renewable energy certificates ("RECs") associated with the energy produced. See Conroy Rebuttal Exh. 1. See also Companies' Response to PSC 6-32; *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, Case No. 2020-00183, Big Rivers' Filing in Response to Commission Order on Confidential Treatment Application Exhs. 1-3 (PSC Ky. Apr. 23, 2021).

SQF compensation rates should not include a hedging value.[57] The Companies do not use financial hedging regarding their fuel costs, so there is no hedging value to offset with SQF energy production.[58]

Finally, if the Commission determines to account for line losses or other technical losses in the Companies' SQF rates, any such loss adjustments should be bounded by the Companies' most recent line loss study.[59]

B. The Commission should retain the Companies' current LQF tariff provisions as proposed to be modified by Companies.

As with the Companies' SQF tariff provisions, the Commission has approved the Companies' LQF tariff provisions under the same or substantially same provisions of KRS Chapter 278 and the Commission's QF regulations.[60] Therefore, the Commission should carefully consider the ramifications of making changes to tariff provisions that have stood the test of time.

KSIA expresses concern about a perceived lack of transparency in the Companies' current LQF provisions.[61] What KSIA overlooks is that the Commission's QF regulations are clear that LQF tariff provisions provide merely a starting point for LQF rate and contract negotiations with potential QFs.[62] Unlike SQF rates, LQF provisions do not constitute a set of standing tariff rates that the Companies must apply and QFs must accept, making any perceived lack of transparency moot because negotiations will necessarily occur to arrive at mutually agreeable terms. Therefore, the Commission should allow the Companies' LQF tariff provisions to continue to stand.

[57] KSIA Brief at 23-24.
[58] Seelye Rebuttal at 44-45.
[59] KU Response to PSC 5-20; LG&E Response to PSC 5-21.
[60] KU Response to PSC 6-29; LG&E Response to PSC 6-29.
[61] KSIA Brief at 26-27.
[62] 807 KAR 5:054 Sec. 7(4).

Regarding the LQF energy rate, as with the SQF rates, there is no justification for adding a hedging component because the Companies do not financially hedge their fuel costs.[63]

Finally, the same arguments made above regarding capacity cost and contract terms for SQFs apply to the LQF tariff provisions: contracts should reflect industry norms, including availability guarantees and pricing.[64] This will help ensure that the Companies' customers, who ultimately pay the cost of QF production, are paying only truly avoided costs.

C. Careful consideration of the relationship between net metering and QF rates should be given when establishing both.

The Commission should carefully consider the relationship between net metering and QF rates and the possible ramifications of setting either one well above market prices, as well as the possible consequences of creating a large gap between the rates. For example, if the Commission prescribes a relatively high NMS-2 compensation rate while retaining truly cost-based QF rates, is there a risk of federal claims under the Public Utility Regulatory Policy Act by large solar developers? Setting both sets of rates above truly avoided costs could result in huge amounts of QF development in Kentucky, all with output the Companies could be obligated to purchase at rates that are harmful to customers. This is an entirely avoidable risk; setting both sets of rates at levels commensurate with truly avoided costs—bounded by competitive market prices—will help ensure fair, just, and reasonable rates for all customers, as well as fair compensation by energy providers of all kinds, both net metering customers and QFs.

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[63] Seelye Rebuttal at 44-45.

[64] The Companies' 100 MW solar power purchase agreement with ibV ("Solar PPA") includes 20-year levelized energy-only pricing of $0.02782/kWh with availability guarantees backed by liquidated damages, and it provides the Companies all of the renewable energy certificates ("RECs") associated with the energy produced. See Conroy Rebuttal Exh. 1. See also Companies' Response to PSC 6-32; *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, Case No. 2020-00183, Big Rivers' Filing in Response to Commission Order on Confidential Treatment Application Exhs. 1-3 (PSC Ky. Apr. 23, 2021).

CONCLUSION

In conclusion, for the reasons stated in this post-hearing reply brief, their post-hearing brief and the record, Kentucky Utilities Company and Louisville Gas and Electric Company request the Commission issue an order by June 30, 2021 accepting the Stipulation as the reasonable disposition of the revenue requirements, revenue allocations, rate design and AMI issues.

The Companies are aware that additional proceedings on these matters are likely. The Joint Intervenors have proposed two additional rounds of discovery, as well as supplemental testimony.[65] Whatever the Commission decides is appropriate, the Companies will participate fully and advocate for NMS-2 and QF rates that are fair, just, and reasonable for all customers.

Today, the Companies believe their proposed Riders NMS-1 and NMS-2 produce fair, just, and reasonable outcomes and deserve Commission approval. They similarly believe their current Riders SQF and LQF with the minor modifications the Companies proposed in these proceedings will continue to comply with the Commission's QF regulations and offer fair compensation to QFs while protecting all customers, and they therefore deserve Commission approval.

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Respectfully submitted,

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[65] JI Brief at 11.

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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Kentucky Utilities Company and Louisville Gas and Electric Company's June 1, 2021 electronic filing is a true and accurate copy of the Joint Post-Hearing Reply Brief being filed in paper medium; that the electronic filing has been transmitted to the Commission on June 1, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a true and correct copy in paper medium will be delivered to the Commission within 30 days of the lifting of the State of Emergency.

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Counsel for Kentucky Utilities Company
and Louisville Gas and Electric Company