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

JOINT RESPONSIVE BRIEF OF THE KENTUCKY ATTORNEY GENERAL AND THE KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention ("Attorney General") and Kentucky Industrial Utility Customers, Inc. ("KIUC") hereinafter referred to jointly as "AG/KIUC" submit this Responsive Brief to address the issues raised in the Post-Hearing Briefs of Joint Intervenors and Kentucky Solar Industries Association, Inc. ("JI/KYSEIA").

I. The Parties Unanimously Agree That The Stipulation Would Result In Just and Reasonable Rates For All Customers.

The Post-Hearing Briefs reflect that the parties fully support all terms and conditions within the Stipulation. Indeed, there is broad agreement among parties that the rates resulting from the Stipulation would result in a just and reasonable outcome for all customers. Those parties represent clients taking service on every rate schedule offered by the Companies. Accordingly, the Commission should not upset the balance of interests achieved in the settlement.

II. The Record In This Case Reflects That The *"Dollar Value"* Of Solar Resources Is Approximately $28/MWh.

With respect to payments for the excess electricity fed back to the grid by net metering customers, JI/KYSEIA argue that the Commission should adopt an eight stack avoided cost methodology (avoided energy cost, avoided ancillary service cost, avoided generation capacity cost, avoided transmission cost, avoided distribution cost, avoided carbon cost, avoided environmental compliance cost, and job benefits) similar to the one contained in its May 14, 2021 Order in the Kentucky Power rate case.[1] This eight stack method, at least for a utility that is not in PJM, would be unlawful here as it does not represent the "*dollar value*" of excess energy as required by KRS 278.465(4).

As stated in our post-hearing brief, dollar value is what the electricity is worth in currency or money. The record in this case regarding recent solar power purchase agreements ("PPAs") involving both the Companies and Big Rivers Electric Corporation ("Big Rivers") reflects that the

[1] Joint Intervenor Post-Hearing Brief at 9; KYSEIA Post-Hearing Brief at 11-17 (citing Order, Case No. 2020-00174 (May 14, 2021) at 25-40 ("Kentucky Power Order")).

fair market value, i.e. *"dollar value,"* of solar generation is approximately $28/MWh, without accounting for renewable energy credit revenues.[2] The net metering statute does not price excess electricity at avoided energy, capacity, transmission, distribution, ancillary, carbon, and environmental cost, plus job benefits. Consequently, consistent with KRS 278.465, the Commission should not establish a *"dollar value"* for excess energy generated by solar net metering customers that exceeds the demonstrated dollar value of solar resources.

III. The Commission Should Approve The Companies' Proposed Cogeneration Pricing.

JI/KYSEIA push for several changes to KU/LG&E's proposed Qualifying Facilities ("QF") tariffs aimed at increasing payments both to facilities 100 kW or less through Rider SQF and to facilities larger than 100 kW through Rider LQF.

The standard applicable to QFs is different than the standard applicable to net-metering generators. Under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), utilities are required to pay for power generated by QFs at *"avoided cost,"* which is defined in Kentucky as *"incremental costs to an electric utility of electric energy or capacity or both which, if not for the purchase from the qualifying facility, the utility would generate itself or purchase from another source."*[3] This standard establishes a limit on the amount that utilities must pay QFs and prevents the PURPA QF purchase obligation from harming customers by forcing them to pay rates for QF power that are higher than what the utility would have charged.

[2] *See* Rebuttal Testimony of Robert M. Conroy at 14-16 and Rebuttal Exhibit RMC-1; *See* Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts, Case No. 2020-00183, Big Rivers' Response to AG 1-43.
[3] 807 Kar 5:054(1).

The Federal Energy Regulatory Commission ("FERC") recently made major revisions to its PURPA rules, and such rules are binding on the states.[4] But the initial premise of PURPA has not changed. Customers are required to be indifferent as to whether the utility supplies the energy and capacity, or whether a QF does. Federal law requires that the price paid to QFs be the same or lower than what the utility would have charged consumers if it had built the power plant instead, or if the utility had made an arm's length power purchase from a non-QF. This is how consumers are made indifferent.

> *First, PURPA section 210(b) sets out standards with which the Commission must comply in setting QF rates. The last sentence of PURPA section 210(b) sets out an upper limit on such rates. 'No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.' [footnote omitted].*
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> *If there were any doubt from the statutory language that incremental costs (avoided costs) are intended to be a hard cap on QF rates, such doubt is dispelled by the Conference Report to PURPA, which provided: 'This limitation on the rates which may be required in purchasing from a cogenerator or small power producer is meant to act as an upper limit on the price at which utilities can be required under this section to purchase electric energy.' [footnote omitted]. The Conference Report also described the reason for the avoided cost cap on QF rates. 'The provisions of this section are not intended to require the rate payers of a utility to subsidize cogenerators or small power produc[ers].*[5]

In this case, while the standard applicable to QFs and net-metering generators is different, the result of the analyses is the same for solar QFs. The *"avoided cost"* associated with solar QFs can only be considered in comparison to other solar facilities, because the companies have ready access to other solar resources at known, fixed rates. Thus, the record in this case demonstrates that the *"avoided cost"* of solar energy and capacity, by an apples to apples comparison, is approximately $28/MWH. Any payment above that amount would unlawfully subsidize solar QFs to the detriment of consumers and violate the PURPA Section 210(b)(1)

[4] FERC Order 872, 172 FERC ¶61,041(July 16, 2020).
[5] FERC Order 872, 172 FERC ¶61,041(July 16, 2020) at 48-49.

requirement that QF rates be "*just and reasonable to the consumers of the electric utility and in the public interest.*"

Accordingly, the Commission should not increase the required energy and capacity payments to solar QF facilities beyond the approximately $28/MWh arm-length price of solar power that the Companies could purchase from another source.

The avoided energy and capacity rates applicable to a non-solar QF would require a separate hearing or contract negotiation where the specific future generation capacity needs of the Companies would be determined in relation to the characteristics of any proposed non-solar QF.[6] In such a hearing or negotiation, the new FERC PURPA rules regarding rates for purchases from QFs at 18 CFR 292.304 would be considered. For example, if the Companies' next planned resource addition was a dispatchable thermal unit, that generation capacity could not be avoided by a non-dispatchable renewable resource. That is why East Kentucky Power Cooperative ("EKPC") does not make a capacity payment to non-dispatchable QFs.[7] To the extent that renewable generation has any capacity value to a utility, that capacity value would be heavily discounted. Kentucky Power Company ("KPC") pays an avoided capacity payment to QFs only for on-peak deliveries.[8]

CONCLUSION

WHEREFORE, the Commission should approve the unanimous Stipulation as well as the Companies' proposals with respect to net metering and cogeneration without modification.

[6] 807 KAR 5:054, Section 7(9) *("…All contracts between qualifying facilities and electric utilities shall be provided to the commission for its review.")*.
[7] P.S.C No. 35, Fourth Revised Sheet No. 44 and 46.
[8] P.S.C. Ky. No. 12 Original Sheet No. 18-1.

Respectfully submitted,

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