

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

ELECTRONIC PETITION OF KENERGY CORP.) Case No.
FOR A DECLARATORY ORDER) 2023-00309

**ATTORNEY GENERAL'S RESPONSE TO KENERGY CORP'S.
APPLICATION FOR DECLARATORY ORDER**

Pursuant to the Order issued by the Public Service Commission (“Commission”) on October 30, 2023, the Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention, (“Attorney General” or “AG”) provides this response to the application for declaratory order filed by Kenergy Corp. (“Kenergy” or “Company”) on September 13, 2023. For the reasons stated herein, the Attorney General request that the Commission grant the declaratory order as requested by Kenergy.

I. Introduction

Kenergy Corp. (hereinafter “Kenergy” or the “Company”), is a non-profit electric cooperative organized under KRS Chapter 279.¹ The Company provides distribution electric service to approximately 58,000 customers in Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Webster, Breckinridge, Union, Crittenden, Caldwell, Lyon, and Livingston Counties.²

Kenergy offers to its members a net metering tariff, Schedule 46, which allows residential or agriculture members to connect a solar facility to Kenergy’s system.³ Specifically, Tariff Sheets 46B and 46C (Exhibits A-1 and A-2) state that Kenergy will

¹ See *Electronic Application of Kenergy Corp. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, Case No. 2021-00066, Application of March 11, 2021 at page 1.

² *Id.* at Page 1.

³ See Application filed September 13, 2023 at page 1.

approve a Level 1 Interconnection System if the generating facility meets the following conditions:

"(1) For interconnection to a radial distribution circuit, the aggregated generation on the circuit, including the proposed generating facility, will not exceed 15% of the Line Section's most recent one hour peak load. A line section is the smallest part of the primary distribution system the generating facility could remain connected to after operation of any sectionalizing devices."⁴

Kenergy has received inquiries from members who wish to install solar equipment on their property that may require certain upgrades to distribution lines.⁵ The cost of the required upgrades is substantial, and Kenergy is seeking this declaratory order to determine who should bear the cost of any required upgrades associated with a member's installation of a solar facility.⁶

II. Discussion

The Attorney General applauds Kenergy for seeking clarification from the Commission on this important issue. Furthermore, the Attorney General agrees with Kenergy, "that any upgrades to Kenergy's system necessary to allow the connection of the proposed solar system must be borne by the member desiring to install the solar generating system and should not be borne among the membership of Kenergy as a whole."⁷ By granting Kenergy's declaratory order, the Commission will be following the requirements of KRS 278.030 to set fair, just and reasonable rates.

A. Kenergy's approach is consistent with the treatment of solar generators under the net-metering statute.

⁴ *Id.* at pages 1-2.

⁵ *Id.* at pages 2-3.

⁶ *Id.* at page 3.

⁷ *Id.* at page 4.

Kenergy’s net-metering tariff, Tariff 46, is the relevant tariff under which Kenergy analyzes this issue. The General Assembly has authorized utilities to purchase excess electricity produced by solar generators under KRS 278.466, Kentucky’s Net-Metering Law. However, the Net-Metering Law also makes clear that the generator is responsible for upgrades driven by those interconnections. For example, at least three sections of the Net-Metering Law specifically require customer-generators to compensate fully the utility for the costs driven by service provided.

Section 2 requires, “[a]ny additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator’s expense.”⁸

Section 5 requires:

Using the ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators.⁹

Section 9 requires, “[a]ny upgrade of the interconnection between the retail electric supplier and the customer-generator that is required by commission-approved tariffs for the purpose of allowing net metering shall be made at the expense of the customer-generator.”¹⁰

If the Commission were to allow these solar generators, whose generation Kenergy describes as “significant,”¹¹ to receive heavily subsidized upgrades at the expense of other

⁸ KRS 278.466(2).

⁹ KRS 278.466(5).

¹⁰ KRS 278.466(9).

¹¹ Application at 2. 135 to 320 KW.

ratepayers, this would be inconsistent with the approach required by the General Assembly under the statutory framework authorizing the net-metering statute.

B. Commission precedent requires that ratepayers at large should not subsidize the business decisions of certain self-interested groups.

The Commission has established a general precedent that existing ratepayers should not subsidize energy-intensive activities, even under approved tariffs, if those activities primarily benefit certain individuals or companies, or concentrated groups of individuals or companies. Here are some examples.

First, the Commission has determined that the rate base at large should not be burdened by increased costs resulting from utility procurements of renewable energy requested by certain businesses. The Attorney General argued and the Commission agreed that ratepayers of LG&E/KU should not subsidize the purchase of renewable energy procured directly at the request by industrial customers Dow and Toyota to meet clean energy goals.¹² Dow and Toyota requested 75 MW of renewable energy. LG&E/KU procured 100 MW, leaving 25 MW to be allocated to existing native load.¹³ The Commission found that LG&E/KU procurements for Dow and Toyota should not be allowed to drive rate increases for existing customers:

Dow and Toyota's goals are commendable, but they are not reason enough to permit agreements that result in an increase in costs to families, schools, churches, and other businesses.¹⁴

¹² See *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to satisfy customer requests for a Renewable Energy Source under Green Tariff Option #3*, Case No. 2020-00016. Response Brief of April 17, 2020.

¹³ *Id.* at Application of January 23, 2020.

¹⁴ *Id.* at Order dated June 18, 2020 at page 14.

The Commission went on to say, “Kentucky is open for green business, but not at the expense of those businesses’ neighbors.”¹⁵

Second, the Commission recently determined, in the Duke Energy Kentucky (“DEK”) rate case, that a proposal to install of electric vehicle charging infrastructure caused unjustified risks of cost-shifting to non-participants. In denying DEK’s electric vehicle pilot program, the Commission noted:

Duke Kentucky’s proposal risks increasing costs for customers and shifting costs to non-participants. Unless all costs are directly assigned, cost shifting is unavoidable.¹⁶

Third, the Commission has determined that economic development special contracts offering discounted rates are inappropriate if other ratepayers are harmed. The Commission denied approval of a special contract with a potential 250 MW customer, which included substantial rate discounts where there was substantial risk of harm to other customers.¹⁷ In denying the special contract, the Commission determined that the rates it produced were not fair, just, and reasonable under KRS 278.030(1) “due to the likelihood of resulting increased rates for non-participating ratepayers.”¹⁸

The concerns expressed by the Commission in these cases are equally true here. Certain categories of customers, solar generators, seek to use Kenergy’s distribution system in manner that will require upgrades, the cost of which is “substantial.”¹⁹ Individuals and businesses certainly should be free to install solar generating facilities on

¹⁵ *Id.* at 15.

¹⁶ See *Electronic Application of Duke Energy Kentucky, Inc. for (1) an adjustment of electric rates; (2) approval of new tariffs; (3) approval of accounting practices to establish regulatory assets and liabilities; and (4) all other required approvals and relief*, Case No. 2022-00372. Order dated October 12, 2023 at page 66.

¹⁷ See *Electronic Tariff Filing of Kentucky Power Company for Approval of a Special Contract with Ebon International, LLC, Case No. 2022-00387*. Order of August 28, 2023.

¹⁸ *Id.* at 19.

¹⁹ Application at 3.

their property if it benefits their private or commercial interests, but they should not expect existing customers to pay for the substantial costs driven by those private, individual choices. Granting Kenergy's application will not prevent interested individuals or businesses from constructing solar generating facilities when it makes financial sense for them to do so; it will simply protect other ratepayers from unfairly subsidizing the financial opportunities of the few.

III. Conclusion

The Commission should grant Kenergy's declaratory order and find that any distribution upgrades required to serve these solar generating facilities should be borne by the member or members driving those costs; those costs should not be allocated to the utility's other customers.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on October 13, 2023, a copy of the forgoing was served via the Commission's electronic filing system.

this 13th day of October, 2023.

A handwritten signature in blue ink, appearing to read "J. Michael Ward". The signature is written in a cursive style with a horizontal line extending from the end.

Assistant Attorney General