

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

In the Matter of:

ELECTRONIC TARIFF FILINGS OF)
LOUISVILLE GAS AND ELECTRIC COMPANY)
AND KENTUCKY UTILITIES COMPANY TO)
REVISE PURCHASE RATES FOR SMALL) Case No. 2023-00404
CAPACITY AND LARGE CAPACITY)
COGENERATION AND POWER)
PRODUCTION QUALIFYING FACILITIES AND)
NET METERING SERVICE-2 CREDIT RATES)

**RESPONSE BRIEF OF JOINT INTERVENORS KENTUCKY SOLAR
ENERGY SOCIETY AND MOUNTAIN ASSOCIATION**

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Dated: June 14, 2024

I. Introduction

Kentucky Solar Energy Society (“KYSES”) and Mountain Association (“MA”) (collectively the “Joint Intervenors”) offer these responses to the initial briefs of the Attorney General, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (together the “Companies”), and the Kentucky Solar Industries Association, Inc. (“KYSEIA”), each filed May 24, 2024. Generally, the OAG brief makes little legal or factual argument, and the Companies attempt to avoid compliance with the previous orders of the Commission through repeated straw men and diversions. Joint Intervenors continue to generally support the arguments of KYSEIA, made in their initial brief. The failure to take a position in either this or the Joint Intervenors’ opening brief on any specific issue raised in the docket or initial briefs does not signal support, or opposition to such specific issue.

II. Reply to the Attorney General’s Brief

In its initial brief the Attorney General criticizes the potential for “subsidization and cost-shifting” to remaining customers, states that “the Companies and the Intervenors have provided thorough treatment of the application of these factors in testimony,” and argues with no support or analysis of the record that the Companies’ “[t]he Companies calculation of NMS-2 Bill Credits of \$0.0704 \$/kWh (LG&E) and \$0.07468 kWh (KU) based on those same factors

appears justified and well-supported by the evidence in the record,”¹ citing the values from the Companies’ initial Generation Planning & Analysis.² The Attorney General either ignore or overlooks the fact that the assumptions underlying that initial proposal were altered, changing the effective avoided costs changed in the Companies’ proposal,³ a fact that the Companies themselves acknowledge in their initial brief in supporting the updated rate calculations.⁴

The Attorney General further offers a survey of other jurisdictions, arguing “...rooftop solar customers are receiving excessive benefits for the power they generate at the expense of other customers....”⁵ The Attorney General, however, ignores examples to the contrary, even within the states cited.⁶ Ultimately, though,

¹ *Attorney General's Brief*, (May 24, 2024), at 6.

² *2024-2025 Qualifying Facilities Rates & Net Metering Service-2 Bill Credit: Generation Planning & Analysis* (Oct. 2023) at 17.

³ *Response Of Kentucky Utilities Company and Louisville Gas and Electric Company to the Commission Staff's First Request for Information* (Jan. 11, 2024) at Question No. 1.

⁴ *Brief of Louisville Gas and Electric Company and Kentucky Utilities Company* (May 24, 2024) at 4-5 (“Companies’ Brief”).

⁵ *Attorney General's Brief* at 4-5.

⁶ See, e.g., *Appalachian Power Company Wheeling Power Company Charleston, w.va. Rate Schedules Terms and Conditions of Service Governing Sale of Electricity in West Virginia*, TARIFF N.M.S. (Net Metering Service), available at <https://www.appalachianpower.com/lib/docs/ratesandtariffs/WestVirginia/SiteReadinessTariffSheetsEff6-1-24.pdf>; *N. Ind. Pub. Service Co. LLC,, Original Sheet No. 175 IURC Electric Service Tariff*, RIDER 580 NET METERING, available at <https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/electric-rates/2023-to-current/rider-580.pdf>. Indeed, NIPSCO explicitly assess DERs as supply-side candidate options” and affirmatively plan “with an eye towards how strategically-sited generation alternatives could defer substation and other distribution system investment,” a practice Joint Intervenors would encourage. *N. Ind. Pub. Service Co. LLC, 2021 Integrated Resource Plan*, at 94-95 (Nov. 15, 2021), available at https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/irp/2021-nipsco-integrated-resource-plan.pdf?sfvrsn=f6ae0251_6.

the important point is not what other states are doing, but what the law of Kentucky requires.

III. Reply to the Brief of Louisville Gas and Electric Company and Kentucky Utilities Company

The Companies open their brief arguing

Notably, although all parties to this case issued data requests to the Companies, none offered testimony challenging the rates or rate components the Companies calculated in response to PSC 1-1.

Indeed, the sole piece of intervenor testimony in this proceeding challenged two NMS-2 rate components that the Companies do not propose to change, namely the avoided carbon cost and jobs benefits components.⁷

The Companies continue thereafter to ignore that they did propose an updated NMS-2 Bill Credit, which in the tariff is a single value. That they proposed updated amounts for some of the avoided costs that make up that value, and for others they proposed the same amounts used previously, does not change the fact that ultimately they made a proposal, and should be required to support it.

With regard to the avoided carbon cost, Companies argue that Joint Intervenors' expert witness Andrew McDonald "establishe[d] his recommendation solely on his asserted cost of CCS,"⁸ asserting that he should have accounted for

⁷ Companies' Brief at 1.

⁸ *Id.* at 11.

other compliance alternatives,⁹ without themselves offering any such alternative compliance scenarios or strategies, ignoring the burden is in fact on the Companies to support their avoided carbon cost. Indeed, Joint Intervenors acknowledged in their opening brief that CCS may not be available on the timeframe required to comply with new EPA rules, and this is in fact evidence that the costs are likely to be much greater than the EPA has estimated.¹⁰ The Companies themselves have repeatedly argued the same in other forums.¹¹ More broadly, however, the Companies' assertion that Mr. McDonald's recommendations were based solely on the estimates of costs of carbon capture and storage ignore his broad survey of current developments supporting the need for immediate and drastic reductions in carbon emissions, and the likelihood of the Companies' ratepayers bearing the brunt of those costs.¹²

The Companies further rely on outdated information to attempt to undermine Mr. McDonald's estimate of carbon costs. In arguing for lower avoided

⁹ *Id.*

¹⁰ *Memorandum Brief of Joint Intervenors Kentucky Solar Energy Society and Mountain Association* (May 24, 2024) at 7-8 ("Joint Intervenors' Brief").

¹¹ *See, e.g.,* Testimony of Lonnie Bellar in Case No. 2023-00422, *Electronic Investigation of Louisville Gas and Electric Company and Kentucky Utilities Company Service Related to Winter Storm Elliott* from 1:36 p.m. to 1:42 p.m.; *Comments of PPL Corporation on Proposed New Source Performance Standards For Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emissions Guidelines For Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*, (Aug. 08, 2023).

¹² *Testimony of Andrew McDonald on Behalf of Joint Intervenors Kentucky Solar Energy Society and Mountain Association* (Feb. 29, 2024) at 4-16.

carbon costs, Companies cite to EPA's proposed Greenhouse Gas Rule,¹³ ignoring that the rule has since been finalized, and EPA's estimates for the costs of CCS appear to have risen.¹⁴ For example, as opposed to the “ \$19 to \$44 per ton of carbon sequestered (adding \$6 to \$15 per MWh to the levelized cost of energy)” cited by the Companies,¹⁵ EPA estimates in its final rule a cost between \$46 and \$60/ton,¹⁶ as noted by Joint Intervenors in their initial brief.¹⁷

For the avoided carbon cost, Companies state that Mr. McDonald offered no evidence regarding the dollar-denominated amount, attempting to shift the burden away from themselves, and that they are not obligated to update that cost until their next rate case filing, “which the Companies’ October 2023 tariff filing that eventually became this proceeding certainly was not.”¹⁸ As stated in Joint Intervenors’ initial brief, the instant case is indeed a rate case, insofar as it concerns

¹³ US EPA, *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*, 88 Fed. reg. 33,240 (May 23, 2023).

¹⁴ US EPA, *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*, 89 Fed. Reg. 39,798 (July 8, 2024) (“GHG Rule”).

¹⁵ Companies’ Brief at 11.

¹⁶ GHG Rule at 39,934-35

¹⁷ Joint Intervenors’ Brief at 7.

¹⁸ Companies’ Brief at 2.

updates to the Companies' rates.¹⁹ That the filing does not update separate "base" rates is of no matter.

Finally, Companies argue that compensation to net metering customers should be somehow capped at the cost of "comparable utility-scale solar."²⁰ It should be clearly noted at the front that distributed energy resources and utility-scale solar are not necessarily any more or less comparable than any other utility-scale resource as compared to any distributed resource with regard to principles of rate setting, and the two are in fact apples and oranges. If the argument were to have any validity, then the all-in costs of the utility-scale solar power would have to be considered, including the depreciation paid by ratepayers and other costs not necessarily included in the per-kilowatt cost of the utility solar. But more importantly, this is not the analysis ordered by the Commission in setting the dollar-denominated compensation to net-metering customers.²¹ The Commission

¹⁹ Joint Intervenors' Brief at 11-12.

²⁰ Companies' Brief at 3.

²¹ Case no. 2020-00174, *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* (filed July 15, 2020), Order (May 14, 2021) ("KPCo Order") at 25-39; Case No. 2020-00349, *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*, and Case No. 2020-00350, *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* (filed Nov. 25, 2020) ("2020 Rate Cases"), Order (entered Sept. 24, 2021) and Order (entered Nov. 04, 2021).

has ordered that certain avoided costs be considered, and laid out principles for how that should be done. That is the analysis that is required to be relied on in the instant case.

IV. Reply to the Memorandum Brief of Kentucky Solar Industries Association, Inc.

Joint Intervenors continue to be broadly supportive of the arguments made by KYSEIA in their initial brief.²² KYSEIA is quite correct in pointing out numerous flaws in the avoided cost calculations of the Company, which continues to substitute its own judgment for a consistent use of available information, for instance excluding consideration of off-system sales,²³ and substituting their own chosen inflation rate where convenient.²⁴ The flaws that KYSEIA points out are in direct contravention of the principles the Commission has laid out for setting compensation for net-metering customers,²⁵ and should be corrected.

V. Conclusion

Wherefore, Joint Intervenors continue to respectfully maintain that the Commission modify the proposed bill credit for NMS-2 customers to reflect the updated avoided carbon cost suggested, and require the Companies to file updated proposed rates for the remaining avoided cost components by a date certain in the

²² *Memorandum Brief of Kentucky Solar Industries Association, Inc.* (May 24, 2024).

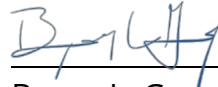
²³ *Id.* at 5-7.

²⁴ *Id.* at 7-9.

²⁵ *See* Case no. 2020-00174 at 21-24.

near future, as well as ordering all additional modifications to the Companies' proposed rates as justified by compliance with the law and previous principles laid out by the Commission.

Respectfully Submitted,

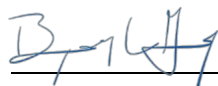


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CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on June 14, 2024; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



Byron L. Gary