

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

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

ATTORNEY GENERAL'S BRIEF

On December 13, 2023, the Kentucky Public Service Commission (“Commission”) opened an investigation into a tariff filing made by Louisville Gas & Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “the Companies”). That tariff filing sought authority to set rates for both Small Capacity Cogeneration and Small Power Production Qualifying Facilities (“SQF”) and Large Capacity Cogeneration and Large Power Production Qualifying Facilities (“LQF”), as well as the dollar-denominated bill credit rate for Net Metering Service-2 (“NMS-2”). The Office of the Attorney General intervened, as did the Kentucky Solar Industries Association, Inc. (“KYSEIA”), the Kentucky Solar Energy Society (“KYES”), and Mountain Association (“MA”), the latter two groups doing so jointly. The Commission and the Intervenors propounded multiple rounds of data requests, to which the Companies responded. KYES and MA sponsored the testimony of a witness, Mr. Andrew McDonald. The Companies sponsored rebuttal testimony offered by Mr. Stuart Wilson and Mr. Michael Hornung. Upon request of the

parties, the Commission set a procedural schedule which allowed the parties to file Memorandum Briefs articulating their position on the issues to be decided.

Net metering, in the simplest terms, is the compensation paid to customers who generate power through their rooftop solar array in excess of their needs, which is then dispatched back to the grid and the utility. Other customers on the grid then use that power, with a portion being lost to inefficiency of the line.

Historically, compensation to customers who sold excess electricity back to the utility was at a rate equal to the price per kilowatt-hour that the utility charged residential customers for that electricity. Due to the expense of installation, few sought to install rooftop solar and the rate impacts of that pricing methodology to other retail customers were minor. Therefore, little attention was paid to this segment of the market. However, with time and advancements in the solar industry, the price of solar panels fell, and residential solar installations increased. Utilities were then forced to confront the reality that compensating customers for their excess generation at the traditional one-to-one kilowatt-hour energy credit was a losing proposition because that method overcompensated net metering customers and required the utilities to pass excess costs on to their non-net metering customers.

While some interest groups still advocate for continuing to compensate rooftop solar generators at a historic one-to-one kWh rate, it has become clear that such a methodology unfairly transfers excessive generation costs to the utilities' non-net metering customers. Under a system that compensates net-metering customers at a one-to-one value, net metering customers are effectively allowed to use the existing grid as a free, unlimited battery without paying the associated costs. Over forty states, including

Kentucky, have enacted rules to address developing net metering issues.¹ Kentucky's net metering law, which was updated in 2019 with the enactment of Senate Bill 100, grandfathers existing customers for 25 years, allowing them to continue to receive the net metering compensation they were receiving as of December 31, 2019. It also allows utilities to amend net metering tariffs prospectively, starting January 1, 2020. Finally, the law caps the amount of generation a utility is required to purchase from net metering customers. When cumulative net metering systems reach 1% of a utilities' single hour peak load in a calendar year, a utility is no longer required to offer the program.

In compliance with Senate Bill 100, the Companies amended their tariffs related to compensation of SQF, LQF, and net-metering customers effective in 2021.² The Companies proposal here amends those rates to reflect changed circumstances.

I. The Companies' proposal appropriately considers the impacts of net-metering on all ratepayers, including non-participants.

When considering the net metering compensation issue, the Commission should take a holistic perspective since the compensation afforded to net metering customers for excess energy impacts every other KU/LG&E retail customer. While customers electing to install rooftop solar should have the option to do so, that choice should not lead to unfair, unjust, and unreasonable rates for other retail customers in violation of the Commission's statutory mandate.

¹ Kentucky's net metering statutes can be found in KRS 278.465 through KRS 278.467.

² *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 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 Meter Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350

If a retail customer chooses to install rooftop solar on their home, they immediately receive the benefit of lower electricity bills regardless of whether they are paid for any excess energy they generate. And when the sun does not shine, their electricity consumption is not interrupted, as they continue to receive electricity from the electric utility. Further, many net metering customers view their choice as having a positive impact on the environment. These reasons alone should suffice to justify the installation of solar panels for those who choose to do so.

However, as the solar industry has grown, the question of whether rooftop solar customers are receiving excessive benefits for the power they generate at the expense of other customers is becoming increasingly important. Many states have taken steps to address these issues.

Idaho recently overhauled its net-metering compensation rates, “recogniz[ing] that the fundamental purpose of on-site generation is to offset a customer’s own usage, that on-site generation should not create cost shifting between generators and non-generators...”³ In so doing, “the [Idaho] commission worked to accurately assign the appropriate share of fixed costs and unquantified benefits of on-site customer generation, and to provide a reasonable balance between the interests of customers with on-site generation and customers without it.”⁴ Indiana utilities have dramatically reduced net-metering payments.⁵ West Virginia has decreased compensation for some net-metering

³ *Commission issues order on Idaho Power on-site and self-generation tariffs*, [https://puc.idaho.gov/Fileroom/PublicFiles/Press/20240102Idaho%20Power%20ECR%20Press%20Rel ease%201229.pdf](https://puc.idaho.gov/Fileroom/PublicFiles/Press/20240102Idaho%20Power%20ECR%20Press%20Release%201229.pdf)

⁴ *Id.*

⁵ *The day Indiana rooftop solar died*, <https://pv-magazine-usa.com/2022/11/17/the-day-indiana-rooftop-solar-died/>

customers.⁶ North Carolina reduced compensation for net-metered energy exports and imposed additional fees to address cost shifting.⁷ Even California, a leading state in solar adoption and generation, decided that the inequities of a one-to-one compensation rate were problematic. On December 15, 2022, the California Public Utilities Commission (“CPUC”) issued a decision dramatically reducing the compensation rate for net-metering customers by “calibrat[ing]” payments to the value those resources provide to the grid.⁸

Thus, it seems practically universal at this point that, even in jurisdictions with aggressive renewable energy agendas, impacts to non-participants must be a critical consideration when the Commission approves net-metering compensation rates.

II. The NMS II proposal results in fair, just, and reasonable rates.

In order to achieve fair, just, and reasonable rates for all customers, it stands to reason that excess rooftop solar generation should only be purchased at the lowest reasonable price. In all other instances, Kentucky utilities are required to pursue least cost resources.⁹ Moreover, requiring a utility to pay more than is required for power is not only wasteful and duplicative on its face,¹⁰ but clearly runs afoul of the Commonwealth’s least-cost regulatory mandate.

⁶ *PSC approves settlements involving Mon Power, net-metering cases*, https://wvmetronews.com/2024/03/27/psc-approves-settlements-involving-mon-power-net-metering-cases/?utm_medium=email.

⁷ *North Carolina regulators slash payments to rooftop-solar owners*, <https://www.canarymedia.com/articles/solar/north-carolina-regulators-slash-payments-to-rooftop-solar-owners>.

⁸ See Fact Sheet *Modernizing NEM to Meet California’s Reliability and Climate Goals*, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/net-energy-metering-nem/nemrevisit/final-december-2022-fact-sheet-nem.pdf>.

⁹ See, e.g., 807 KAR 5:058 § 8.

¹⁰ See KRS 278.020(1); *In Re: 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, Order (March 2, 2020).

The Attorney General urges the PSC to set rates that are fair and just for all customers, and which avoid the subsidization and cost-shifting which could occur if net-metering customers are compensated in excess of the utilities' avoided cost.

The Commission has defined “[a]voided costs” as “the incremental costs that a utility would have incurred but for services purchased from net metered customers instead of purchasing or generating the same amount of services from another source.”¹¹ In a recent *Kentucky Power* case, the Commission articulated eight factors to consider when determining avoided costs associated with net metering: (1) energy cost, (2) ancillary services, (3) generation capacity, (4) transmission capacity, (5) distribution capacity, (6) carbon cost, (7) environmental compliance cost, and (8) job benefits.¹² The witnesses for the Companies and the Intervenors have provided thorough treatment of the application of these factors in testimony.

The 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. As such, the Attorney General recommends approval of the proposal as filed.

¹¹ *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 of May 14, 2021 at 6-7.

¹² *Id.*

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 May 24, 2024, an electronic copy of the foregoing was served via the Commission's electronic filing system.

this 24th day of May, 2024

A handwritten signature in blue ink, appearing to read "J. Michael" followed by a stylized flourish.

Assistant Attorney General