

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

In the Matter of:

ELECTRONIC APPLICATION OF DUKE)	
ENERGY KENTUCKY, INC. FOR AN)	
ADJUSTMENT TO RIDER NM RATES AND)	Case No. 2023-00413
FOR TARIFF APPROVAL)	

**MEMORANDUM BRIEF OF JOINT INTERVENORS KENTUCKY SOLAR
ENERGY SOCIETY AND KENTUCKIANS FOR THE COMMONWEALTH**

Byron L. Gary
Tom FitzGerald
Ashley Wilmes
Kentucky Resources Council
P.O. Box 1070
Frankfort, Kentucky 40602
(502) 875-2428

*Counsel for Joint Intervenors Kentucky
Solar Energy Society and Kentuckians for
the Commonwealth*

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I. Introduction

The application of Duke Energy Kentucky (“Duke”, or “Company”) in this proceeding to establish a new Rider NM-II suffers from multiple flaws in methodology, and substantial and repeated noncompliance with the requirements for such a tariff under the law and past Commission precedent. As Joint Intervenors show, the application and process of the Company does not comply with the principles already set out by the Commission for establishing net metering rates. It also does not consider all of the costs and benefits required by the Commission, and undervalues several of those it does consider in direct contravention of Commission precedent. Company also was not required to make this filing on the deadline that it self-imposed. Wherefore Joint Intervenors respectfully request the Commission reject the filing for substantial and repeated noncompliance. If the Commission decides not to reject the filing Joint Intervenors respectfully request that the Commission include values or substitute more appropriate values as suggested below, and that it reaffirm and clarify the manner in which “net metering” is required to be undertaken under an NMS 2 Tariff.

II. Statement of the Case

Duke filed an application with the Kentucky Public Service Commission (“Commission”) on December 11, 2023 to rename and close its *Rider NM: Net Metering Rider* (“NM-I”) and establish a new *Rider NM-II: Net Metering II Rider*. The

application would, among other things, close Rider NM-I, under which customer-generators currently take service, and which offers a one-to-one compensation for each kilowatt-hour (kWh) delivered by the customer to the Company and each kWh delivered by the Company to the customer.¹ It would allow current customers taking service under NM-I to continue service under NM-1 for twenty-five years, given certain conditions are met or remain the same.² And it would establish the new Rider NM-II, under which new customer-generators are compensated pursuant to a two-channel billing system, through which they are billed the standard rates for each kWh delivered to them by the Company, and are compensated at a new, lower, dollar-denominated “Avoided Cost Excess Generation Credit (ACEGC)” for each kWh delivered by them to the Company.³

Direct testimony from the Company proposes a value for that dollar-denominated credit based on the Company’s calculations of avoided energy, capacity, and ancillary services costs.⁴ The Company advocated against including avoided transmission and distribution capacity costs, but proposed values it believes the Commission should use if it finds such costs should be included.⁵ The

¹ Application (filed Dec. 11, 2023) at 4.

² *Id.*

³ *Direct Testimony of Bruce L. Sailors on Behalf of Duke Energy Kentucky, Inc. Sailors* (filed Dec. 11, 2023) (Sailors Direct Testimony) at 5

⁴ *Id.* at 18-19.

⁵ *Id.* at 19-21.

Company further stated that avoided environmental compliance and carbon costs are “included in the forecasted marginal energy prices.”⁶ Direct testimony further claimed that it “is unaware of a consistent or appropriate method for evaluating” jobs benefits.⁷

Pursuant to the Commission’s scheduling order entered January 05, 2024, the Office of the Attorney General (OAG), Kentucky Solar Energy Industry Association (KYSEIA), and Kentuckians for the Commonwealth (KFTC) and Kentucky Solar Energy Society (KYES) moved to intervene and were allowed (KFTC and KYES together as Joint Intervenors). Two rounds of pre-hearing information requests were allowed to the Company from the intervening parties. Joint Intervenors filed direct testimony and responded to one round of requests for information from the Company. The Commission and Staff submitted, and Company responded to, five rounds of prehearing data requests. A hearing was held on May 21, 2024, with seven witnesses testifying for the Company, and the Joint Intervenors presenting testimony from a single witness. Parties were also allowed one round of post-hearing requests for information, and the Commission and Staff submitted two rounds of post-hearing data requests.

⁶ *Id.* at 17.

⁷ *Id.* at 21.

The most pertinent positions of Joint Intervenors are laid out below. In general Joint Intervenors show that Duke has disregarded the principles and components of setting credits to be paid to ratepayers connecting Distributed Energy Resources (“DERs”), and therefore the filing should be rejected. To the extent the Commission deems it appropriate to accept the Company’s application and substitute more appropriate methods and rates for compensation, the Joint Intervenors suggest alternatives. The failure to state a position on any particular aspect of the Company’s application does not constitute endorsement.

III. Legal Background

Aside from being subject to the requirements of Kentucky law generally, and Chapter 278 of the Kentucky Revised Statutes specifically, compensation of customer-generators must be “fair, just and reasonable” pursuant to KRS 278.030(1), and the requirements of KRS 278.465-468 (collectively, “Net Metering Statutes”), which were amended in 2019.

a. The Legislature amended the net metering statutes in 2019, but retained net metering over a billing period as the method of compensation.

In 2019 the Kentucky Legislature amended the Net Metering Statutes to redefine “Net Metering” from “the difference between the ... electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.” It instead defined it to mean

“the difference between the ... [d]ollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period ... and ... [d]ollar value of all electricity consumed by the eligible customer-generator over the same billing period”⁸ The legislature retained the requirement for retail electric suppliers to offer net metering “over a billing period”⁹ to customer-generators up until “the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during a calendar year.”¹⁰

b. Prior Kentucky Public Service Commission decisions have implemented the net metering statutes and set a precedent for how compensation is to be set

After the adoption of SB 100, the Commission, sua sponte, opened an administrative case to consider implementation of the new statute, and “to invite comments from interested utilities and stakeholders in order to develop a record which the Commission can draw upon as it considers broad issues of implementation of the Net Metering Act as they apply to individual utilities.”¹¹ Ultimately, while not issuing “findings of fact or law regarding the implementation of the Net Metering Act,” or settling on a specific set of requirements for setting

⁸ 2019 Ky. Acts Chapter 101 (SB 100) at 1, *amending* KRS 278.465(4).

⁹ *Id.*

¹⁰ *Id.*, *amending* KRS 278.466(1).

¹¹ Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act*, Order (Jul. 30, 2019) at 1.

compensation,¹² the Commission determined it “must develop a process that identifies known or reasonably expected measurable costs and benefits that can be factored into the ratemaking process, along with next best alternatives, based on the principle of most reasonable least-cost alternative, and opportunity costs.”¹³

It did so in two subsequent cases in 2020. In the first, the Commission considered the application of Kentucky Power Company to create a Tariff N.M.S. II. There it “conclude[d] that many of the best practices supported by intervenors are reasonable and should be incorporated into NMS II for the reasons set forth below.”¹⁴ It set forth five “Principles for Compensation for Eligible Customer-Generators”:

- Evaluate eligible generating facilities as a utility system or supply side resource;
- Treat benefits and costs symmetrically;
- Conduct forward-looking, long-term, and incremental analysis.
- Avoid double counting; and
- Ensure transparency.¹⁵

The Commission further examined netting periods and required Kentucky Power Company to “continue to net the total energy consumed and the total energy

¹² Case No. 2019-00256, Order (Dec. 18, 2019) at 32.

¹³ *Id.* at 33.

¹⁴ 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*, Order (May 14, 2021) at 21.

¹⁵ *Id.* at 21-23.

exported by eligible customer-generators over the billing period” consistent with the statute.¹⁶ Finally, as to the compensation for the difference between the dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period, the Commission determined that some of the avoided cost approaches of Kentucky Power Company to “be a reasonable starting point for developing the avoided cost components,” while “intervenors and the record support including additional avoided cost components to customers-generators through the export rate.”¹⁷ It settled on nine components of costs and benefits for compensation of customer-generators, and methodologies for determining seven:

- Avoided energy costs,
- Avoided generation capacity costs,
- Avoided transmission capacity costs,
- Avoided ancillary service costs,
- Avoided distribution capacity costs,
- Avoided carbon cost,
- Avoided environmental compliance cost,
- Jobs benefits, and
- Avoided costs of customer-generators participating in wholesale markets under Federal Energy Regulatory Commission (FERC) Order No. 2222.¹⁸

¹⁶ *Id.* at 24-25.

¹⁷ *Id.* at 25.

¹⁸ *Id.* at 25-40.

With regard to the last two components, the Commission directed Kentucky Power Company to “evaluate job benefits and economic development as an export rate component for Kentucky Power’s next rate case filing;”¹⁹ and put Kentucky Power “on notice that [net benefit of avoiding FERC Order No. 2222 compliance] may be included in a future net metering rate proceeding.”²⁰

Later in 2020, the Commission received applications from Louisville Gas & Electric Company and Kentucky Utilities Company (together LG&E-KU) to create a Tariff N.M.S. 2. That application, part of a larger base rate case, was largely broken off from the rest of the case, and decision on the N.M.S. 2 tariffs of both LG&E and KU was issued after much of the rest of the case was decided pursuant to a stipulation and agreement between several parties.²¹ In its decision regarding the proposed Tariff N.M.S. 2 the Commission reiterated at the outset of its decision the principles set in the Kentucky Power Case.²² It went on to require, as with Kentucky Power Company, that the Companies “should continue to net the total energy

¹⁹ *Id.* at 38.

²⁰ *Id.* at 39.

²¹ 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*, Order (Jun. 30, 2020) at 3; and Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric 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*, Order (Jun. 30, 2021) at 3-4.

²² Case Nos. 2020-00349 and 2020-00350, Order (Sep. 24, 2021) at 41-42.

consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1.”²³ Finally, the Commission set compensation based on the same components as in the Kentucky Power Company case.²⁴ It found the Companies’ avoided energy costs “insufficiently transparent”;²⁵ LG&E-KU’s arguments that there were no avoided generation capacity, transmission capacity, distribution capacity, or avoided carbon costs to be unreasonable;²⁶ and LG&E-KU’s argument that “avoided environmental compliance costs are fully accounted for in the avoided energy and capacity cost components” inconsistent with the Commission’s prior

²³ *Id.* at 48. On motion for rehearing from the Companies, the Commission ordered this portion of this sentence to be stricken and replaced with “should continue to net the dollar value of the total energy consumed and the dollar value of the total energy exported by eligible customer generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1.”# Still dissatisfied with this outcome, the Companies appealed the decision of the Commission to the Franklin Circuit Court. Franklin Circuit Court Case No. 21-CI-00872, *Kentucky Utilities Company and Louisville Gas and Electric Company v. Public Service Commission of Kentucky*. That action was dismissed upon motion of LG&E-KU and the Commission (Franklin Circuit Court Case No. 21-CI-00872, Order (Feb. 14, 2022)) after the Company filed tariffs implementing the Commission’s Orders by stating “Company will (a) bill Customer for all energy consumed from Company in accordance with Customer’s standard rate and (b) Company will provide a dollar denominated bill credit for each kWh Customer produces to the Company’s grid.” Louisville Gas and Electric Company, P.S.C. No. 13, First Revision of Original Sheet No. 58, DATE OF ISSUE: November 9, 2021; Kentucky Utilities Company P.S.C. No. 20, First Revision of Original Sheet No. 58, DATE OF ISSUE: November 9, 2021.

²⁴ *Id.* at 48-58.

²⁵ *Id.* at 49.

²⁶ *Id.* at 50-56.

precedent.²⁷ Finally, it also required LG&E-KU to further evaluate job benefits and economic development.²⁸

IV. Argument

a. Duke was not required to file this rate application

It is worth noting at the outset that while Duke was certainly entitled to seek to implement updated rates pursuant to the Commonwealth's Net Metering Statutes and prior Commission precedent, contrary to Duke's claims that it was somehow required to make such a filing to comply with the change in Kentucky law that occurred with the adoption of SB 100 five years ago,²⁹ nothing in the Net Metering Statutes *requires* utilities to make such a filing any more than they are *required* to seek rate increases.³⁰ This proceeding, initiated by the Company, was entirely at their discretion to either file, or not file.

²⁷ *Id.* at 56-57.

²⁸ *Id.* at 57-58.

²⁹ Company's responses to *Tendered First Set of Requests to Duke Energy Kentucky, Inc. For Information From Joint Movants for Joint Intervention Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (responses filed Feb. 02, 2024) ("JI 1"), number 20 ("Response to JI 1-20"); Hearing Testimony of Bruce Sailors at 5'25" to 5'28".

³⁰ *See, e.g.*, KRS 278.466(3) ("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* or generation and transmission cooperative on behalf of one (1) or more retail electric suppliers.") (emphasis added); KRS 278.466(5) ("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.") (emphasis added).

Considering the Company has several times pointed out its belief that it is near the limit where it is no longer *required* to offer net metering to eligible customer generators,³¹ this point bears noting for two reasons. First, while setting rates that are fair, just, and reasonable,³² rate proceedings are initiated by retail electric suppliers at their discretion - discretion of which Companies should carefully consider the use and implications. As with Tariff NM-II, the Company is not required to apply to discontinue net metering. The Company should ensure transparent and reciprocal stakeholder outreach prior applying to make any further changes. Second, the number of potential customer-generators the Company believes may be subject to NM-II makes the fairness, justness, and reasonableness of its proposal in this case more confounding. The incremental benefit to the Company or other customers from the proposed change does not appear to have been analyzed by the Company.

b. Duke did not comply with the principles of setting net metering compensation rates

³¹ *Direct Testimony of Bruce L. Sailors on Behalf of Duke Energy Kentucky, Inc.* at 7-8, JI 1-13.a., attachment 1 at 4-5. KRS 278.466(1) ("Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during a calendar year, the supplier shall have no further obligation to offer net metering to any new customer-generator at any subsequent time.")

³² KRS 278.030, 278,040; *see also Ky. Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373, 380-83 (Ky. 2010) (discussing the Commission's plenary authority to investigate and determine fair, just, and reasonable rates).

The Company is clearly familiar with the principles laid out by the Commission in prior orders for compensation of customer-generators, and claims to have followed them,³³ but has fallen short in several regards.

i. Duke did not consider eligible customer-generators as a supply-side resource using consistent methods, processes, and assumptions

Duke claims it “has reviewed customer-generator resources similarly, appropriately adjusted for the Company’s system, to prior Commission orders.”³⁴ As shown by Joint Intervenors’ expert witness, the entire scheme of the Company’s proposed tariff treats ratepayers very differently than supply-side resources.³⁵ As opposed to long-term contracts for generation resources, ratepayers considering DERs face the prospect of uncertain recovery of their investment, let alone any reasonable rate of return on that investment.³⁶ Customer-generators making a long-term investment should be assured of some sort of assurance of recovering that investment in the form of long-term rates tied to the rate they pay for energy from the Company.³⁷

³³ Response to JI 1-4.a.

³⁴ *Id.*

³⁵ *Prepared Direct Testimony of Richard McCann, ph.d on Behalf of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (filed Mar. 13, 2024) (McCann Direct Testimony) at 10-14.

³⁶ *Id.* at 11-12.

³⁷ *Id.*

ii. Duke did not treat benefits and costs symmetrically

The Company also stated that to comply with the requirement to treat costs and benefits symmetrically, it “reviewed and commented on the Commission’s list of avoided costs.”³⁸ However, as explored more fully below, the Company explicitly argues against incorporation of several of those avoided costs and benefits, in contravention of the Commission’s prior orders acknowledging the “demonstrated ... need to evaluate a broad range of known or reasonably expected measurable benefits of eligible customer-generators,” including “additional avoided cost components beyond those proposed” by other utilities.³⁹ The Company continues to make the same arguments and assumptions about the costs and benefits of distributed energy resources (DERs), essentially ignoring the precedent of the Commission and effectively pushing the burden onto the Commission and potential intervenors to argue for those *required* components to be included, and determine the value for them that complies with the Commission’s requirements.

iii. Duke did not conduct forward-looking, long-term, and incremental analysis

Similarly, the Company claims it complied with the Commission’s requirement to conduct forward-looking, long-term, and incremental analysis by

³⁸ Response to JI 1-4.a.

³⁹ Case No. 2020-00174, Order (May 15, 2021) at 22-23.

“us[ing] a 25-year, forward looking analysis to establish the ACEGC value.”⁴⁰

However, as discussed in the Direct Testimony of Dr. McCann, and explored more fully below with regard to specific costs, the Company falls short in a number of regards. Specifically, while ratepayers make a long-term investment, and rates are set based on long-term modeling from the Company, those rates are subject to periodic change at the initiation of the Company.⁴¹

In addition, a 25-year outlook on its own, even if nominally long-term, does not ensure the principle of being forward-looking and incremental. Dr. McCann demonstrated that the immediate change in compensation of customer-generators applied for by the Company would contravene the forward-looking, incremental principle of gradualism.⁴² In addition, the Company failed to be forward-looking with regard to the full potential of distributed energy resources. As discussed below, the Company had presented to stakeholders that it understood that “[t]he future calls for more dynamic and holistic energy solutions” and “[c]ooperation between EE and distributed generation programs will be essential to maximize the value and positive impacts of both.”⁴³ However, the Company has not proposed or

⁴⁰ Response to JI 1-4.a.

⁴¹ McCann Direct Testimony at 12.

⁴² McCann Direct Testimony at 3, 37.

⁴³ Response to JI 1-13.a., Attachment 1 at p. 19.

apparently further studied options in this regard, even those available in other of its own territories.⁴⁴

iv. Duke did not ensure transparency either in its process or the calculations of avoided costs

Perhaps most significantly, the Company did not comply with the requirement to ensure transparency. Duke stated that it “has attempted to be transparent through stakeholder engagement discussions and where appropriate, uses publicly available information.”⁴⁵ The Company, however, repeatedly used proprietary data, calculations, and modeling, even where transparent and public data are available and where use of that same data has been required by the Commission in the past.⁴⁶ Additionally, the “stakeholder engagement discussions,” were claimed to be “open, non-binding exchange of information.”⁴⁷

The information exchanged was anything but open and transparent, even if clearly non-binding. Duke did not truly accept any of the input of stakeholders. The Company claims to have heard from stakeholders that they prefer monthly netting, the Company should consider new technology, simple rules are preferred, transition periods should be considered, and augmentation of DERs “with energy

⁴⁴ Hearing Testimony of Bruce Sailors at 4’26” to 4’29”.

⁴⁵ Response to JI 1-4.a.

⁴⁶ *Compare, e.g.,* Sailors Direct Testimony at 18-19 *with* Case No. 2020-00174 Order (May 14, 2021) at 28-29. These issues are explored more fully in the following sections on the individual avoided cost calculations.

⁴⁷ Response to JI 1.13.c.

efficiency, demand response, rate design, thermostats, and/or battery storage in an expandable, sustainable program.”⁴⁸ However, the only suggestion from stakeholders the Company claims to have followed-through on is the request to keep it simple.⁴⁹ Even in this regard, the Company has fallen short. With their proposal for crediting energy fed to the grid, which fails to use monthly netting, the Company’s proposal is anything but simple. Additionally, as discussed above, the Company’s proposal would make it incredibly difficult for ratepayers considering installation of DERs to determine the likelihood or timeframe for recovery of that investment.⁵⁰

Further, even if open information was shared at the time, it is not apparent that even half of the proposed “Excess Generation Credit” methods presented to stakeholders was followed. Stakeholders were presented with a “Commission directed list of avoided costs to consider” along with proposed methodologies for discussion during the second meeting.⁵¹ Of those, as discussed below, it became clear under questioning from the Commission that perhaps only the methods for energy and capacity were followed by the Company in its application.⁵² The

⁴⁸ Sailers Direct Testimony at 6-7.

⁴⁹ Hearing Testimony of Sailers at 4’20” to 4’30”.

⁵⁰ McCann Direct Testimony at 10-12.

⁵¹ Response to JI 1.13.a. Attachment 1 at 9.

⁵² Hearing Testimony of Sailers at 5’36” to 5’49” Chandler cross on stakeholder presentation

Company also acknowledged in its presentation that “certain stakeholder groups prefer monthly netting,” and that “the Commission has ordered monthly netting for other utilities,”⁵³ leaving the impression that this is the option the Company intended to implement, as no other method was presented or discussed. However, it is not the method the Company proposed.⁵⁴

Finally, the Company failed to give serious consideration to input from stakeholders which questioned the very need for filing the NMS-2 tariff change. During stakeholder meetings stakeholders explained that statute does not require utilities to change their net metering tariff and that considering how close Duke is to reaching the 1% threshold, there was no compelling need for this change. Further, stakeholders argued that the cost to all parties involved (in time and resources litigating before the PSC) would be excessive relative to any presumed benefit of the tariff change. The Company disregarded this input and has offered no compelling argument for the tariff change, beyond the incorrect assertion of it being “required by statute.”⁵⁵

c. The avoided costs proposed by Duke do not comply with the standards or policy for setting compensation for customer-generators, and are not fair, just, and reasonable

⁵³ *Id.* at 8.

⁵⁴ Company’s Responses to *Kentucky Solar Industries Association, Inc. Initial Requests for Information to Duke Energy Kentucky, Inc.* (filed Feb. 02, 2024) (“Responses to KYSEIA 1”) at 5.a.

⁵⁵ Sailors Hearing Testimony at 5’20” to 5’28”.

It is unsurprising given the Company's disregard for the Commission's overall principles for setting compensation to customer generators that a number of their "ACEGCs" are also deeply flawed. General non-compliance with the Commission's principles for determining these costs is discussed above, while flaws in the calculations (or lack thereof) are discussed below.

i. Duke improperly excluded avoided distribution and transmission costs

The first way in which the Company disregards the Commission's prior precedent is in its insistence that DERs avoid no distribution or transmission capacity costs. This argument should be disregarded out of hand on the basis that it has already been considered and denied. For instance, the Commission has already found previously that "avoided distribution capacity costs are a commonly quantified component because of the benefits that distributed generation provides on the distribution system."⁵⁶ The Commission has also already held that the position that DERs do not result in any avoided transmission costs is not "convincing, accurate, or reasonable."⁵⁷

To the extent the Company's arguments differ at all from previous arguments, they are still not compelling.

⁵⁶ Case No. 2020-00174, Order (May 14, 2021) at 33.

⁵⁷ Case Nos. 2020-00349 & 2020-00350, Order (Sep. 24, 2021) at 51.

1. Customer-generators are not a “random and intermittent” resource

The primary argument made by the Company against inclusion of avoided transmission and distribution costs is that

Recognizing transmission planning principles associated with intermittent, non dispatchable rooftop solar exports, the Company does not include a value for avoided transmission capacity. The Company does not have evidence that random, intermittent, non-dispatchable rooftop solar exports provide avoided transmission cost for Duke Energy Kentucky in the transmission] planning process.⁵⁸

However, through two rounds of discovery, the Company pointed to no specific “planning principle” that justifies denying Commission precedent in this regard.⁵⁹

The Company only pointed to entire transmission planning manuals and a general “process of study and analysis.”⁶⁰

At hearing, the Company admitted that not only is it possible to model the availability of a variety of resources, including not only DERs but also traditional thermal resources, but that it had in fact done just that for this proceeding.⁶¹

⁵⁸ Sailers Direct Testimony at 19. The Company makes an identical statement with regards to distribution capacity at 20.

⁵⁹ Response to JI 1.16.a., JI 1.17.a.; Company responses to *Supplemental Requests for Information to Duke Energy Kentucky, Inc. From Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (filed Mar. 06, 2024) (“Response to JI 2”), JI 2.5.a.-b. (It was realized during drafting this brief that JI Supplemental Requests were misnumbered 1.1, 1.2, etc. JI appreciate Company correctly numbering them, formatted as KSES-DR-02-001, etc., in its responses).

⁶⁰ Response to JI 2.5.a.-b.

⁶¹ Sailers Hearing Testimony at 4’50” to 4’56”.

Further, as the Company not only can but does regularly track and forecast demand,⁶² it is a simple enough proposition to predict exports from DERs in the aggregate. Finally, as pointed out by Joint Intervenors' expert witness, not only are DERs *not* intermittent and random, they are in fact sometimes *more* constant and predictable than Demand Side Management measures, if less closely matched to customer demand.⁶³

The Company's argument, then, that an "electric furnace turning on, pool pump turning on" at a single customer-generator's house is unpredictable, and there are therefore no distribution or transmission benefits that can be determined from DERs,⁶⁴ is specious and should be disregarded.

2. The Commission should order inclusion of avoided distribution costs in setting any eventual compensation rate

Just in case the Commission disagreed with it, the Company put forward a suggested level for avoided distribution and transmission capacity costs. This section suggests inclusion of the former, while the next suggests improvement for the former.

As suggested by Joint Intervenors' expert witness, utilities often over-build distribution infrastructure, even despite no projections of large load growth as with

⁶² *Id.* at 4'56" to 4'58".

⁶³ McCann Direct Testimony at 16.

⁶⁴ Response to KYSEIA 2.2.

Duke, and therefore undervalue the potential benefits of DERs.⁶⁵ In the current instance, given the lack of a more appropriate level, and given the clear impacts on distribution capacity from customer-generators noted above, if the Commission approves Duke's application it should accept the proposed alternative avoided distribution capacity cost.⁶⁶

3. The Commission should order a full cost of service study to determine the portion of the incremental cost of transmission displaced by customer-generators

The Commission has ordered previously that it is reasonable to use historical investment data.⁶⁷ Based on this suggestion, Joint Intervenors' expert witness testified on a reasonable alternative method for calculating avoided transmission costs using publicly available information on historical investments, and arrives at a value of \$0.0174 per kilowatt-hour, but suggests a full cost of service study for customer-generators to determine the amount of the credit they can claim.⁶⁸

Joint Intervenors respectfully request the Commission to order the Company to conduct such a study prior to approving any compensation rate for its proposed Rider NM II. To the extent it decides not to reject the application, Joint Intervenors

⁶⁵ McCann Direct Testimony at 26.

⁶⁶ Sailors Direct Testimony at 21.

⁶⁷ Case No. 2020-00174, Order (May 14, 2021) at 32.

⁶⁸ McCann Direct Testimony at 22-25

request such a study be ordered within a reasonable amount of time, and that the full value calculated by Dr. McCann be used in the meantime.

ii. Duke acknowledged and then disregarded the Commission's precedent with respect to setting avoided capacity costs

Through testimony the Company acknowledges and disregards the previous requirement of the Commission to use publicly available information, namely PJM's Net Cost of New Entry (Net CONE) values.⁶⁹

The Commission previously ordered the use of Net CONE for calculation of avoided generation capacity costs, finding that it "reflects an approximate capacity market equilibrium and therefore better reflects long-term avoided capacity value."⁷⁰ As stated above, and the Company has acknowledged, this is consistent with the Commission's principle of ensuring transparency in setting rates.⁷¹

The Company argues that there are differences between its "position regarding the marginal capacity resource" and that of PJM Net CONE.⁷² However, the differences cited by the Company are not sufficient to overcome the preference for publicly available data. Similarly to previous findings of the Commission, "the avoided capacity rate ... should be Net CONE because the avoided capacity rates

⁶⁹ Sailers Direct Testimony at 19.

⁷⁰ Case No. 2020-00174, Order (May 14, 2021) at 29.

⁷¹ *Id.* at 23.

⁷² Sailers Direct Testimony at 19.

could be determined from publicly available documents and because Net CONE provide[s] a market based capacity value specific to [the Company]'s location."⁷³

Furthermore, as shown by Joint Intervenors' expert witness, the Company's concerns are easy enough to overcome. First, as a general matter, as a PJM member Duke is in fact relying on PJM for other purposes in this filing, and participates fully as a member and so is not so different as it asserts.⁷⁴ To the extent that Duke is in a different position from every other PJM member, the differences are easy enough to account for, as done by Dr. McCann in calculating an avoided capacity cost of \$0.02079 per kilowatt-hour,⁷⁵ which Joint Intervenors respectfully request the Commission use to the extent the Company's filing is not rejected.

iii. Duke ignored the added avoided carbon costs created by customer-generators

The Company argues that because their avoided energy cost "incorporates the impacts of the Inflation Reduction Act of 2022," no avoided carbon cost should be included.⁷⁶ The Commission has clearly required more full consideration of the benefits of customer-generators in this regard.

⁷³ Case No. 2020-00174, Order (May 14, 2021) at 29.

⁷⁴ McCann Direct Testimony at 21.

⁷⁵ *Corrected Prepared Direct Testimony of Richard McCann, ph.d on Behalf of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (filed Jun. 7, 2024) at

⁷⁶ Sailors Direct Testimony at 17.

As pointed out in previous orders of the Commission, utilities regularly plan around the cost and intensity of carbon emissions.⁷⁷ Just as in those cases, Duke has regularly planned around carbon emissions, including in its 2021 Integrated Resource Plan (IRP).⁷⁸ In that case, the Company included a carbon price starting at \$5/ton and increasing \$5/year.⁷⁹ The suggestion, therefore, that the inclusion of the benefits of the IRA fully encompassed the avoided costs of carbon was always incorrect, in addition to being in contradiction of the Commission's prior orders.

Developments since that time have made this plain. As acknowledged at the hearing, recent EPA regulations mandate the installation of Carbon Capture and Sequestration (CCS) at existing coal plants, such as Duke's East Bend facility, and all new natural gas combustion turbines.⁸⁰ In that rule, EPA quantified the benefits of avoided carbon emissions by applying the social cost of greenhouse gases (SC-GHGs)⁸¹ referenced by Joint Intervenors' expert witness.⁸² Due to the wide variation

⁷⁷ Case No. 2020-00174, Order (May 14, 2021) at 35-36; Case Nos. 2020-00349 and 2020-00350, Order (Sep. 24, 2021) at 55-56.

⁷⁸ Case No. 2021-00245, *Electronic 2021 Integrated Resource Plan of Duke Energy Kentucky, Inc.*

⁷⁹ *Id.*, Duke Energy Kentucky 20Twenty-One Integrated Resource Plan (filed Jun. 21, 2021) at 30.

⁸⁰ 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 (Jul. 08, 2024).

⁸¹ *Id.* at 39,810.

⁸² McCann Direct Testimony at 27-28.

in potential costs under the rule, and the uncertainty even the Company acknowledges in methods of implementation of the rule,⁸³ Joint Intervenors continue to advocate for a somewhat more moderate avoided carbon price between \$58 and \$188 per ton, or \$0.0466 per kilowatt-hour. As the only price put forward to comply with the Commission's required cost component, Joint Intervenors respectfully request that it be included if the Commission accepts the Company's filing.

iv. Duke ignored a variety of known or anticipated costs of compliance with environmental regulations

According to the Company's direct testimony, environmental costs were included in the avoided energy costs.⁸⁴ The Commission has previously considered and rejected this precise position,⁸⁵ and explicitly required consideration of at least two additional environmental rules.⁸⁶

Company witness Sailers states "[e]nvironmental costs include reagents such as Coal Combustion Residual (CCR) costs, lime and ammonia. As more fully described in Mr. Kalemba's testimony, these costs are included in the forecasted

⁸³ See, e.g., Case No. 2024-00197, *Electronic 2024 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, Kentucky 2024 Duke Energy Integrated Resource Plan (filed Jun. 21, 2024) at 38 ("The company has estimated that CCS technology projects not yet started would not be complete prior to 2032.").

⁸⁴ Sailers Direct Testimony at 17; *Direct Testimony of Matthew Kalemba on Behalf of Duke Energy Kentucky, Inc.* (filed Dec. 11, 2023) (Kalemba Direct Testimony) at 5-6.

⁸⁵ Case Nos. 2020-00349 and 2020-00350, Order (Sep. 24, 2021) at 56-57.

⁸⁶ *Id.*, Case No. 2020-00174 (May 14, 2021) at 37.

marginal energy prices.”⁸⁷ Mr. Kalemba’s testimony, however, only discusses “Sulfur Oxide (SOx) and Nitrogen Oxide (NOx) allowance costs” provided to the Company by a third party.⁸⁸ Further, at hearing, Company witness Kalemba could not state precisely the basis for those costs, and whether they included the effect of updates to the US EPA’s allowance trading program.⁸⁹

Even assuming the most up-to-date costs for emissions allowances, and/or reagents were included in the Company’s avoided energy cost calculations, the Company admittedly did not include potential capital costs of compliance with environmental regulations.⁹⁰ What’s more, the Company admittedly did not include the effects of a range of environmental rules that were known and proposed at the time,⁹¹ and have since become final.⁹²

⁸⁷ Sailers Direct Testimony at 17.

⁸⁸ Kalemba Direct Testimony at 5.

⁸⁹ Kalemba Hearing Testimony at 7’48” to 7’53”.

⁹⁰ *Id.* at 8’11” to 8’14”.

⁹¹ Response to JI 1.4.c.

⁹² See, e.g., US EPA, *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*, 89 Fed. Reg. 16202 (Mar. 06, 2024); US EPA, *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508 (May 07, 2024); US EPA, *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments*, 89 Fed. Reg. 38,950 (May 08, 2024); US EPA, *Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, 89 Fed. Reg. 40,198 (May 09, 2024). Also see the previous section regarding the now-final rule on greenhouse gas emissions from electric generating units.

Because the Company absolutely has capital environmental costs that can be avoided by generation from customer-generators, and new and updated environmental rules will absolutely have an effect on the value of energy produced by customer-generators, they deserve credit for them, and the Company's application that fails to include them should be rejected for again failing to comply with prior Commission orders.

v. Duke fails to account for the inherent variability and risk in fuel prices in calculating its avoided energy costs

Duke utilized the Encompass model to develop forecasted locational marginal prices (LMPs) based on "the hourly dispatch price of the marginal unit in PJM based on the production cost model results."⁹³ While compliant with past Commission precedent, it underestimates the value provided by customer-generators.

Market forecast prices alone fail to account for the benefit of energy produced by customer-generators through the sheer fact of their consistent production and cost. Utilities can know, and to a great deal control, the price paid to customer-generators and when it will change.⁹⁴ In contrast, as discussed by the Joint Intervenors' expert witness, energy prices in PJM, particularly driven by

⁹³ Kalemba Direct Testimony at 4-5.

⁹⁴ For instance, see above Section III.a.

variable gas prices, can be extremely volatile.⁹⁵ Attempting to put a price on the value that customer-generators provide in hedging against those volatile costs can be difficult, but Dr. McCann puts the price at \$0.0140 per kilowatt-hour.⁹⁶ That the Commission has denied specific risk-hedging practices proposed by the Company, as pointed out by Mr. Sailors in rebuttal testimony,⁹⁷ does not obviate that a value is provided by customer-generators that should be accounted for. Furthermore, the Company asserts that avoided costs are “revised to reflect changing fuel pricing over time, including natural gas”, but does not assert how or on what frequency this will occur.⁹⁸

Joint Intervenors respectfully request that, to the extent Company’s filing is not rejected, Dr. McCann’s proposed value for the risk-hedging be adopted.

vi. Duke disregarded the Commission’s previous orders with regard to jobs benefits of distributed generation

The Commission has also ordered that utilities consider the jobs and economic benefits inherent in DERs, finding that “including the incremental economic impact from installing eligible generating facilities may be warranted.”⁹⁹ Company is aware of prior Commission precedent ordering further consideration

⁹⁵ McCann Direct Testimony at 17-20.

⁹⁶ *Id.* at 20.

⁹⁷ *Rebuttal Testimony of Bruce L. Sailors on Behalf of Duke Energy Kentucky, Inc.* at 8-11.

⁹⁸ *Id.* at 10.

⁹⁹ Case No. 2020-00174, Order (May 14, 2021) at 38.

of jobs and economic benefits, however states that “[t]here does not appear to be a Commission approved process for quantifying this suggested benefit and the Company is unaware of a consistent or appropriate method for evaluating such benefit.”¹⁰⁰ However, as pointed out by the Commission during the hearing, “it’s hard to find something out if you’re not looking....”¹⁰¹

The Commission should not allow customer-generators to continue to be under-compensated for the energy they produce because utilities continue to refuse to examine the benefit as the Commission has previously ordered. In the current instance, Joint Intervenors’ expert witness offered a detailed examination of the benefits of rooftop solar.¹⁰² Joint Intervenors respectfully request that Duke’s application be rejected for failure to comply with the Commission’s prior orders, and directed to conduct a full jobs and economic benefits analysis prior to reapplying. Alternatively, Joint Intervenors request that the Company be given a reasonable, near-future deadline, no later than 6 months from the decision of the Commission, to conduct such a study and submit an application to adjust approved compensation rates by including such a benefit.

d. The Commission should reaffirm the proper manner in which netting is to occur

¹⁰⁰ Sailers Direct Testimony at 21.

¹⁰¹ Sailers Hearing Testimony at 5’43”.

¹⁰² McCann Direct Testimony at Exhibit 1.

This case presents an opportunity for the Commission to clarify the manner in which “net metering” is required to be undertaken under an NMS 2 Tariff. The manner in which Duke proposes to implement the NMS-2 tariff is inconsistent both with the plain language of the governing statute and is inconsistent with the methodology adopted and the tariff resulting from Case No. 2020-00174, the first case in which the Commission considered the changes effected by the General Assembly in 2019. It is also inconsistent with the *Orders* entered by the Commission in Cases No. 2020-00349 and 2020-00350 on that issue.

Prior to adoption of the legislative changes affected by the General Assembly through Senate Bill 100 in 2019, (and to this day for those utilities that have not modified their net metering tariffs to reflect those changes), the netting of generation and usage by a customer-generator under the Net Metering law was quantified as a “one-to-one (1:1) kilowatt-denominated energy credit provided for energy fed into the grid[.]”¹⁰³ In the 2019 revisions to the net metering statutes, those taking service under the prior statute were accorded a twenty-five (25) year grace period during which those net metering tariff provisions would remain in place and continue to be netted in that fashion.¹⁰⁴

¹⁰³ KRS 278.466(6).

¹⁰⁴ *Id.*

The 2019 statutory revisions changed the manner in which the energy credit for net metering customers would be measured – from a “kilowatt-denominated energy credit,”¹⁰⁵ to a “dollar-denominated bill credit” the rate of which would be determined by the Commission “using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier[.]”¹⁰⁶

The manner in which net metering was conducted under the pre-2019 statute was that the utility would net the total energy consumed and the total energy exported by eligible customer-generators over the course of each billing period. If, at the end of the billing period, a customer-generator had generated and fed into the grid more kilowatt-hours of electricity than had been consumed over that period, the surplus generation, measured in kilowatt-hours, would be credited and carried forward to future billing periods.

The 2019 amendments to the net metering laws modified the basis for the denomination of bill credits, from a kilowatt-hour basis to a dollar-denominated value.

The 2019 statutory revisions did **not** alter the manner in which the generation and consumption (however denominated) is to be netted – which is over a billing period. The proposed Duke Rider NM II is contrary to KRS 278.466 and to

¹⁰⁵ *Id.*

¹⁰⁶ KRS 278.466(3)

the Commission's Order in 2020-00174, which require that the generation and consumption over the billing period be netted, with the retail rate applied to any excess consumption over generation over that period, or the new compensatory rate applied to determine the value of the excess generation over consumption over that period. The Duke approach, which has been referred to as "instantaneous," is not net metering as authorized by KRS 278.466, but is instead a two-channel billing. It is also contrary to the two *Orders* on the net metering issue in Cases No. 2020-00349 and 2020-00350.

While the General Assembly altered the manner in which the crediting was to be expressed for solar energy fed-in to the grid over that consumed over the course of the netting period, the General Assembly neither changed the *period* over which the use and generation were to be netted, nor the fact that there was to *be* a netting of such use and consumption prior to consideration of what credit (or deficit) existed *over the netting period*.

The Duke proposal would replace the netting of electricity generated and consumed over a billing period, with a two-channel approach that no longer "nets" production and consumption (however measured) but instead would assign an instantaneous lower credit value to *all* fed-back electricity, inconsistent with the

underlying statute.¹⁰⁷ The Commission should reject the approach proposed by Duke as fundamentally inconsistent with the governing statutes and the concept of “net metering,” and should instead reaffirm the manner in which the Commission considered and approved the Kentucky Power Company NMS-2 Tariff in Case No 2020-00174, as well as the reasoning and conclusions of the Commission’s *Orders* in Case Nos. 2020-00349 and 2020-00350.

Prior to the enactment of Senate Bill 100 (SB 100) by the General Assembly during the 2019 Regular Session, “net metering” was defined KRS 278.465(4) in this manner:

(4) "Net metering" means the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.

The electricity generated and fed through the meter to the grid by the eligible customer-generator, measured volumetrically and tallied in kWh, was offset by the consumption of electricity through the meter from the grid “over a billing period” and only the excess over consumption was credited, and any deficit was billed after the netting. After such “netting” of consumption and generation over the billing

¹⁰⁷ As noted below, the Commission subsequently adopted a litigation position at odds with those orders, but those Orders have not been withdrawn, modified, or otherwise altered as a result of the change in litigation position, nor has that position been codified by the Commission or any reviewing Court.

period, the customer would receive a bill for the difference between electricity generated and electricity consumed *during* that billing period, or a credit that would carry forward and apply to offset future consumption.

The revised definition of “net metering” in KRS 278.465(4) changed the manner in which the credit of generation over use would be expressed (from a kWh to a dollar-denominated credit) but did **not** change the essence of net metering, which is the netting of the *volume* of electricity generation and consumption over the course of the billing period.

Had the General Assembly intended to eliminate the concept of “netting” generation and consumption over the billing period, it would have so provided, eliminating “over a billing period” and instead amending the law to read that the “dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid and priced as prescribed in Section 2 of this Act.” It did not do so, and Duke cannot selectively ignore the phrase to convert billing-period netting into an instantaneous valuation of all fed-in electricity.

The continued use of the phrase “over a billing period” by the General Assembly in SB 100 demands that the usage and generation first be netted to determine how much, if any, electricity was “generated by an eligible customer-generator” that was “fed back to the electric grid over a billing period.” If consumption exceeded generation during that billing cycle, then there is no

electricity generated and fed back over that period, but instead, a net consumption that under SB 100 would be billed at the retail electric rate. Application of the new dollar-denominated credit to represent the volumetric generation over consumption in the place of a kilowatt-denominated credit does not change the “netting” but rather may affect the valuation of the excess generation that is credited.

The General Assembly has not defined the phrase "fed back to the electric grid," nor the meaning of "consumed by the eligible customer generator." It is perfectly reasonable for the Commission to read the law, consistently with the prior approach of netting consumption and generation, to mean that only that generation not offset by consumption over the billing period is defined as “fed back” and is assigned the export value, and that only consumption that is not offset by production during the billing period is consumption for billing purposes. It monetizes credits and charges, and, in rate making terms, not just in the billing rate, but also the billing determinates. By requiring consideration of the netted volumes of electricity *over* the billing period, it provides that all of the net of generation over consumption at the end of that billing period be credited as determined by the Commission’s assigned value, and that any consumption in excess of that generation be billed in accordance with the approved tariff for that customer class.

This construction of the statute is consistent with the decision in the May 14, 2021 *Order* in Case No. 2020-00174 in applying “net metering” as it was and remains defined in KRS 278.465(4) – as the crediting (now “dollar-denominated”) of that generation over a billing period *in excess of consumption* during that same billing period.

This case presents an opportunity for the Commission to resolve the confusion created by the Commission’s seeming change of position during the judicial review of the Commission’s September 24, 2021 and November 4, 2021 *Orders in Orders* in Commission Cases No. 2020-00349 and 2020-00350.

In the case of *Kentucky Utilities Company and Louisville Gas and Electric Company v. Public Service Commission of Kentucky*, CA No, 21-CI-00872 (Franklin Circuit Court), Louisville Gas & Electric Company and Kentucky Utilities Company (“LGE/KU”) sought judicial review of *Orders* of the Kentucky Public Service Commission in Case Nos. 2020-00349 and 2020-00350. According to that *Complaint*,

This action for review is brought pursuant to KRS 278.410 for review of the Public Service Commission of Kentucky’s (“Commission”) Orders of June 30, 2021 and September 24, 2021 in Commission Case Nos. 2020-00349 and 2020-00350 (“Orders”) and the Commission’s Orders on Rehearing of November 4, 2021 (“Rehearing Orders”) in the same proceedings. More specifically, the Companies seek review of the Commission’s interpretation and application

of KRS 278.465 and KRS 278.466 as they relate to “net metering.”¹⁰⁸

LGE/KU and the PSC jointly moved to dismiss the LGE/KU *Complaint* with prejudice, which was granted on February 11, 2022. In that *Joint Motion To Dismiss*, LGE/KU, joined by the PSC, requested dismissal of the *Complaint* on the basis of interpretations of those *Orders* contained in the *Joint Motion to Dismiss* and the tendered *Order* that were in irreconcilable conflict with the actual text of the *Orders* entered by the Commission on September 24, 2021 and November 4, 2021 in Cases No. 2020-00349 and 2020-00350. The position stated in that joint motion was flatly inconsistent with the Commission’s *Orders*, and was not codified or given any precedential value in the *Order* dismissing the KU/LGE complaint. It is appropriate for clarification and resolution here.

On November 25, 2020, LGE/KU filed with the Commission two parallel applications for relief that included, among other things, a request for Commission approval of a new Standard Rate Rider, “NMS-2” or “Net Metering Service-2.” Per the Application, LGE/KU proposed an NMS-2 tariff, at pertinent part, that would be:

Available to any Customer-generator who owns and operates a generating facility located on Customer’s premises that generates electricity using solar, wind, biomass or biogas, or hydro energy in parallel with Company’s electric distribution system to provide all or

¹⁰⁸ *Complaint*, Num. Para. 1, p. 1.

part of Customer's electrical requirements, and who executes Company's Application for Interconnection and Net Metering on or after January 1, 2021. The generation facility shall be limited to a maximum rated capacity of 45 kilowatts.¹⁰⁹

LGE/KU proposed an NMS-2 tariff that would calculate energy rates and credits in the following manner:

For each billing period, Company will (a) bill Customer for all energy consumed in accordance with Customer's standard rate and (b) Company will provide a dollar denominated bill credit for each kWh of production. The dollar denominated bill credit will be calculated by multiplying the total kWh of production within the billing period by the Non-Time-Differentiated SQF rate within tariff Sheet No. 55. Any bill credits greater than the Customer's total bill will be carried forward to future bills. Unused credits existing at the time Customer's service is terminated, end with Customer's account, have no monetary value, and are not transferrable between locations.¹¹⁰

In response to a request for information in Case No. 2020-00349, LG&E/KU explained its proposed billing practice for NMS-2:

The quoted rider NMS-2 language is not complete. As stated in the Rider NMS-2, "Company will (a) bill Customer for all energy consumed in accordance with Customer's standard rate and (b) Company will provide a dollar

¹⁰⁹ Case No. 2020-00349, Application (filed Nov. 25, 2020). The Case No. 2020-00350 filing was identical in this regard.

¹¹⁰ *Id.*

denominated bill credit for each kWh of production.” The Company’s meters for Rider NMS-2 customers are capable of measuring energy flow in both directions (See KRS 278.466(2) - Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions). Thus, over the billing period, the meter will accumulate the amount of energy delivered to the customer (i.e., energy consumed by the customer) and the amount of energy the customer-generator delivers to the Company (i.e., energy put back onto the grid). The customer-generator will pay the standard tariffed rate for energy consumed and will get a bill credit for energy put back onto the grid at the Rider SQF rate.¹¹¹

The methodology proposed by LGE/KU for the NMS-2 netting period has been characterized as an “instantaneous credit” or “instantaneous netting approach” and is the same proposed here by Duke.

In its September 24, 2021, *Orders* in Case No. 2020-00349 and 2020-00350, the Commission made the following findings concerning KU’s proposed methodology:

Based upon the evidence of record, the Commission finds that LG&E/KU’s proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. This is because LG&E/KU’s proposed instantaneous credit for all energy exported on to the grid

¹¹¹ KU Response to Kentucky Solar Industries Association, Inc.’s Initial Request for Information (filed Jan. 22, 2021), Item 17.

is inconsistent with the plain language of KRS 278.465(4), which provides that “net metering means the difference between” the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.

Consistent with our finding in Case No. 2020-00174¹¹² and KRS 278.465(4), the Commission finds that LG&E/KU should continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1. The Commission further finds that, because the energy charge is based upon electricity consumed, the energy charge and any riders that are based on a per kWh charge should be netted against energy exported pursuant to KRS 278.465(4).¹¹³

In two September 24, 2021 *Orders*, one entered in each of the LGE and KU cases, the Commission denied the rates and charges proposed by LGE and KU for its Tariff NMS-2 and further ordered that LGE and KU Tariffs NMS-2 be modified as described in the September 24, 2021 *Order*.¹¹⁴

¹¹² Case No. 2020-00174 was the *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*, which was the **first** case filed seeking to change the 1:1 netting that existed prior to the 2019 changes to the law.

¹¹³ Case No. 2020-00349, Order (Sept. 24, 2021), at page 48.

¹¹⁴ *Id.* p. 62.

LGE and KU contested the Commission's September 24, 2021 *Orders* in Case Nos. 2020-00349 and 2020-00350 in *Joint Petition of Kentucky Utilities Company And Louisville Gas And Electric Company For Reconsideration Of The September 24, 2021 Order (filed Oct. 15, 2021)*, arguing, among other things, that the Commission's netting approach for NMS-2 was contrary to law.¹¹⁵ By *Order* of November 4, 2021, the Commission, granted rehearing as to the description of the netting methodology as expressed on page 48 of the Commission's September 24, 2021, *Order*.¹¹⁶

With regard to the netting methodology for NMS-2, the Commission ordered:

The first sentence in the second paragraph on page 48 of the September 24, 2021 *Order* is stricken and replaced with the following: Consistent with our finding in Case No. 2020-00174 and KRS 278.465(4), the Commission finds that LG&E/KU should continue to net the dollar value of the total energy consumed and the dollar value of the total energy exported by eligible customer generators over the billing period in NMS 2 **consistent with the billing period netting period established in NMS 1**.¹¹⁷

The Commission did **not** in its November 4, 2021, *Order* modify, withdraw, or otherwise change its September 24, 2021 *Order* finding that KU's proposed

¹¹⁵ *Joint Petition of Kentucky Utilities Company And Louisville Gas And Electric Company For Reconsideration Of The September 24, 2021 Order (filed Oct. 15, 2021)*

¹¹⁶ Case No. 2020-00349, *Order* (Nov. 4, 2021), page 25. The same clarification was made to the *Order* in Case No. 2020-00350.

¹¹⁷ *Id.* (Emphasis added).

methodology for the NMS-2 netting period “is not fair, just and reasonable and should be rejected.” Nor did the Commission modify, withdraw, or otherwise change its September 24, 2021 *Order* holding and explaining that:

This [rejection] is because LG&E/KU’s proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that “net metering means the difference between” the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.¹¹⁸

LGE/KU fully understood that its proposed instantaneous credit proposal had been rejected by the Commission, since it filed a *Complaint* in this matter the Franklin Circuit Court, docketed as 2021-CI-00872 seeking judicial review of the Commission’s September 24, 2021, and November 4, 2021 *Orders* in Case Nos. 2020-00349 and Case No. 2020-00350.¹¹⁹ That *Complaint* notes that the Commission rejected the Companies’ proposed dollar-value netting approach.¹²⁰ The *Complaint* argues that the Commission *Orders* require a ‘two-step netting approach.’¹²¹ The LGE/KU *Complaint* demonstrates that it understood the

¹¹⁸ Case No. 2020-00349, Order (Sep. 24, 2021) at 48.

¹¹⁹ *Kentucky Utilities Company and Louisville Gas and Electric Company v. Public Service Commission of Kentucky, et al.*, Civil Action No. 21-CI-00872, Division II (Complaint filed Nov. 24, 2021).

¹²⁰ *Id.*, at page 13, Numerical Paragraph 47.

¹²¹ *Id.*

Commission to have rejected instantaneous credit or instantaneous netting for all energy exported on to the grid for NMS-2 that had been proposed by LGE and KU.

There has been no subsequent *Order* of the Commission, nor any judicial Order or Opinion, revoking, modifying, or withdrawing the Commission’s rejection of the LGE/KU proposed instantaneous credit or instantaneous netting approach for the LGE/KU Tariff NMS-2.¹²²

Responding to the *Complaint* filed by LGE/KU asserting that the Commission, in its September 24, 2001 and November 4, 2021 *Orders* in Case No. 2020-00349 and 2020-00350, had improperly interpreted and applied KRS 278.465 and KRS 278.466, the agency filed the *Answer of the Public Service Commission of Kentucky* and agreed with the interpretation advanced by LGE/KU in the cases before the Commission and advanced again in the *Complaint*, thus advancing a litigation

¹²² That the Commission’s September 24, 2021 and November 4, 2021 *Orders* in Cases No. 2020-00349 and 2020-00350 intended that the electricity generation and usage over a billing period be netted and that the tariff rates be charged for any excess use over generation or, conversely, any generation over use over that billing period be credited at the new dollar-denominated value, is also clear from the “Appendix B” to the September 24, 2021 *Orders* in both cases, which were unchanged by the November 4, 2021 *Orders* and which required that the company tariffs be revised to reflect that “All excess customer generation, accumulated for the billing period, shall be credited for each month” at the new rate (which was \$0.06924 per kWh for LGE residential customers, and \$0.07366 per kWh). If the LGE/KU approach, now apparently embraced by the agency, of assigning an instantaneous credit to all generation even where such generation is netted by usage over the billing period, there would be no “accumulation” of generation over a billing period nor any “excess” generation. “Excess customer generation” of necessity begs the question, “excess over what?” The answer is plainly, over usage – a netting of kilowatts “for the billing period” resulting in “excess” generation over usage, or “excess” usage over generation to be billed at tariffed rates. The term “net metering” was not changed by the 2019 amendments, and the meters are capable of measuring kilowatt hours, not assigned dollar values.

position at complete and irreconcilable variance with the Commission's *Orders* for which review was sought and creating uncertainty among the Joint Intervenors, regarding their rights under KRS 278.465 and KRS 278.466 with respect to the *Orders* entered in Case Nos. 2020-00349 and 2020-00350.

In the *Orders* dated September 24, 2021 entered in Case Nos. 2020-00349 and 2020-00350, the Commission specifically rejected the approach to "net metering" advanced by LGE/KU yet the agency's litigation posture reflected in the *Answer* to the LGE/KU appeal of those *Orders*, and in the *Joint Motion To Dismiss* and tendered order, embraced the very interpretation and approach to "net metering" that was emphatically and unequivocally rejected by the Commission in its *Orders*. The acquiescence of the Commission to the text of the *Joint Motion To Dismiss* and associated tendered order, and the text of the *Answer of the Public Service Commission of Kentucky* filed in the original action, created uncertainty by embracing the interpretation of the *Orders* that fundamentally alters the actual holdings of those *Orders* and in its effect on NMS-2 is identical to that sought by LGE/KU – an interpretation that was **specifically rejected by the Commission's previous *Orders***.

This Commission has the opportunity to reconcile the litigation posture in the KU/LGE appeal with the September 24, 2021 *Order* in that case, and to reaffirm the

proper manner in which netting is to occur as reflected in the *Orders* in Case Nos. 2020-00174 and in 2020-00349 and 2020-0350, by finding the

proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that “net metering means the difference between” the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.¹²³

V. Conclusion

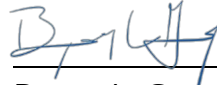
The Company repeatedly and substantially fails to comply with the Commission’s previous orders. In particular, they failed to ensure transparency either in their stakeholder process or their methodology and calculations, to treat eligible customer-generators as supply-side resources symmetrically with other sources of generation, treat benefits and costs symmetrically, or to conduct forward-looking, long-term, and incremental analysis. Further, the Company disregards the Commission’s previously-approved methods for determining the credit amount for net metering customer-generators by failing to use transparent data and sources previously approved by the Commission, failing to include

¹²³ *Order*, Case No. 2020-00349 (September 24, 2021) p. 48.

avoided transmission, distribution, carbon, or environmental costs, and refusing to even examine jobs benefits.

Joint Intervenors therefore respectfully request that the Commission reject the Company's filing without prejudice, with an order to follow prior Commission precedent in the regards listed above before reapplying. Alternatively, Joint Intervenors encourage the Commission to modify the proposed Rider NM II by modifying it to require monthly netting of the electricity fed back to the electric grid over the billing period and the electricity consumed over that same period; including avoided transmission and distribution costs and a reasonable avoided carbon cost in line with that proposed by expert witness for the Joint Intervenors in the Excess Generation Avoided Cost Credit Rate; and ordering the Company to study and file with the Commission within a reasonable period of time not to exceed six months updated rates including jobs benefits, updated avoided transmission costs, and avoided environmental compliance costs.

Respectfully Submitted,

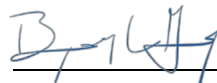


Byron L. Gary
Tom FitzGerald
Ashley Wilmes
Kentucky Resources Council
P.O. Box 1070
Frankfort, Kentucky 40602
(502) 875-2428
Byron@kyrc.org
FitzKRC@aol.com
Ashley@kyrc.org

*Counsel for Joint Intervenors Kentucky
Solar Energy Society and Kentuckians for
the Commonwealth*

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 26, 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